

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 558

FEDERAL POWER COMMISSION, PETITIONER

PANHANDLE EASTERN PIPE LINE COMPANY ET AL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

PERMANENT FOR CERTIORARI FILED FEBRUARY 12, 1949
CERTIORARI GRANTED MARCH 22, 1949

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 558

FEDERAL POWER COMMISSION,
PETITIONER,

VS.

PANHANDLE EASTERN PIPE LINE COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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In the District Court of the United States
For the District of Delaware

Civil Action No. 1172

FEDERAL POWER COMMISSION,

Plaintiff,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, a corporation,
Defendant.

Docket Entries

1. Nov. 13, 1948 Complaint; summons issued.
2. Nov. 13, 1948 Motion for a preliminary injunction.
3. Nov. 13, 1948 Restraining order and order setting motion for preliminary injunction down for hearing on Nov. 23, 1948.
4. Nov. 13, 1948 Memo of plaintiff on points and authorities in support of its motion for preliminary injunction.
5. Nov. 13, 1948 Order specially appointing Daniel L. Herrmann to make service of summons and restraining order.
- 2a 6. Nov. 16, 1948 Daniel L. Herrmann returns on summons, etc. marked "Served 11/13/48."
7. Nov. 16, 1948 Motion of defendant to dissolve temporary restraining order with affidavit of Hy Bird.
8. Nov. 18, 1948 Affidavit of Edward L. Dunn.
- H. Nov. 18, 1948 Hearing on defendant's motion to dissolve temporary restraining order, and on plaintiff's motion for preliminary injunction.
9. Nov. 18, 1948 Brief of plaintiff *re* defendant's motion to dissolve restraining order.
10. Nov. 18, 1948 Brief of defendant *re* its motion to dissolve restraining order.
11. Nov. 22, 1948 Reporter's notes of hearing on defendant's motion to dissolve temporary restraining order.

12. Nov. 22, 1948 Transcript of hearing on motion of defendant to dissolve temporary restraining order.
13. Nov. 22, 1948 Affidavit of Wm. G. Maguire.
14. Nov. 22, 1948 Reply memo of defendant in opposition to plaintiff's motion for preliminary injunction and in support of defendant's motion to dissolve temporary restraining order.
15. Nov. 22, 1948 Order extending temporary restraining order until Dec. 1, 1948.
16. Nov. 24, 1948 Motion of Gregory B. Smith to intervene with proposed Intervenor's Petition attached.
- H. Nov. 24, 1948 Hearing on motion of Smith to intervene.
17. Nov. 24, 1948 Appearance of Arthur G. Connolly for G. B. Smith, applicant for intervention.
18. Nov. 24, 1948 Supplemental brief of plaintiff in support of motion for preliminary injunction.
19. Nov. 26, 1948 Court's memorandum *re* plaintiff's motion for a preliminary injunction (Notice to counsel).
20. Nov. 26, 1948 Order granting motion of Gregory B. Smith to intervene.
21. Nov. 26, 1948 Answer of intervenor defendant, Gregory B. Smith.
- 3a 22. Nov. 29, 1948 Motion of Stephen Carlton Clark, *et al.*, to intervene as defendants.
23. Nov. 29, 1948 Order granting leave of petitioner Stephen Carlton Clark, *et al.*, to intervene as defendants.
24. Nov. 29, 1948 Petition for intervention by Stephen Carlton Clark, *et al.*
25. Nov. 29, 1948 Answer of intervenor defendant, Stephen Carlton Clark, *et al.*
26. Nov. 30, 1948 Stipulation; same day order amending complaint.
27. Nov. 30, 1948 Order denying plaintiff's motion for a preliminary injunction (Notice to counsel).
28. Nov. 30, 1948 Court's findings of fact and conclusions of law.
29. Nov. 30, 1948 Plaintiff's notice of appeal (Copies of Counsel and Clerk, U. S. Court of Appeals).

30. Nov. 30, 1948 Plaintiff's notice of application to U. S. Court of Appeals for a stay pending appeal.
31. Nov. 30, 1948 Order denying plaintiff's motion for a stay pending appeal.

IN UNITED STATES DISTRICT COURT

Complaint for Injunction

The plaintiff for cause of action against the defendant, alleges as follows:

I.

This action arises under the Natural Gas Act, 52 Stat. 833, particularly Sections 20 (a) and 22 thereof (15 U. S. C., Secs. 717s(a) and 717u), as hereinafter more fully appears.

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II.

The plaintiff, Federal Power Commission (sometimes hereinafter referred to as the "Commission"), is an administrative agency of the United States of America, charged, *inter alia*, with the administration of the Natural Gas Act, and having its principal office at 1800 Pennsylvania Avenue, N. W., Washington, D. C.

III.

The defendant, Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle"), is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, within the jurisdiction of the United States District Court for the District of Delaware, and is an inhabitant of such district.

IV.

As hereinafter more fully appears, defendant is engaged in the transportation of natural gas in interstate commerce, and the sale in interstate commerce of such gas for resale, and is a "natural-gas company" within the meaning of the Natural Gas Act, and so subject to the jurisdiction of the Federal Power Commission under the provisions of said Act.

V.

Defendant owns and operates, and at all times herein mentioned, owned and operated, an integrated natural-gas

pipe-line system originating in the Hugoton natural-gas field of Kansas, Oklahoma and Texas and the Panhandle natural-gas field of Texas, and extending across the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into the State of Michigan. By means of such system, defendant, pursuant to contracts obligating it so to do, and on file with the Commission as rate schedules under the Natural Gas Act, supplies natural gas to distributing companies along the route thereof serving in excess of 1,500,000 consumers. Such system has been and is maintained and operated by defendant for the purpose of supplying natural gas to the public which such system was and is capable of serving.

VI.

At all times herein mentioned prior to October 1948, defendant owned certain oil and gas leases and gas leases on 96,164.21 acres of land located in Grant and Stevens Counties, Kansas, in the Hugoton natural-gas field, having estimated gas reserves of 700 billion cubic feet or in excess thereof.

VII.

On September 22, 1948, defendant organized Hugoton Production Company (hereinafter referred to as "Hugoton"), a Delaware corporation, which has an authorized capital stock consisting of 1,500,000 shares of \$1.00 par value.

VIII.

On or shortly before October 11, 1948, defendant, Panhandle and Hugoton entered, or attempted to enter, into a contract, whereby Hugoton agreed to issue 810,000 shares of its stock to Panhandle, and Panhandle agreed, in consideration thereof, to pay to Hugoton the sum of \$675,000 in cash and to transfer, assign and convey to Hugoton the oil and gas leases and gas leases covering the 96,164.21 acres referred to in paragraph VI hereof, together with certain oil leases covering 640 additional acres. It was further understood and agreed between Panhandle and Hugoton that Hugoton would promptly proceed to develop the acreage to be transferred to it and attempt to negotiate sales of gas therefrom to purchasers other than Panhandle; however, that beginning on January 1, 1965, Panhandle would have the option to purchase all gas produced from these leases at such price as Hugoton could then obtain from

others. The parties contemplated that under expected rates of withdrawal of gas from the leases transferred to Hugoton during the period to 1965, Hugoton would produce and sell approximately 300 billion cubic feet of gas.

IX.

On October 11, 1948, pursuant to such agreement or purported agreement, Hugoton issued the 810,000 shares of its stock to Panhandle; and the sum of \$675,000 in cash was paid by Panhandle to Hugoton, and the aforementioned leases were transferred, assigned and conveyed; or attempted to be transferred, assigned and conveyed, by Panhandle to Hugoton.

X.

Such 810,000 shares of stock comprise all of the outstanding stock of Hugoton, and Hugoton is the wholly-owned subsidiary of the defendant, Panhandle. All of the officers and directors of Hugoton are officers and directors of Panhandle. The sole office of Hugoton, other than its statutory office in the State of its incorporation, is the executive office of Panhandle in New York, New York. Hugoton has no executive officers or employees other than those employed by and paid by Panhandle. Its present assets consist only of the \$675,000 cash and the aforementioned leases.

XI.

On October 11, 1948, the Board of Directors of Panhandle declared a dividend in kind at the rate of one-half share of the capital stock of Hugoton for each 1,620,000 outstanding shares of common stock of Panhandle. Panhandle proposes, on or before November 17, 1948, to pay this dividend to its common stockholders.

XII.

On October 26, 1948, the Commission issued an order *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-1147, a copy of which is attached hereto as Exhibit "A" and made a part of this complaint, instituting an investigation, pursuant to Section 14 of the Natural Gas Act, of the facts and circumstances involved in the formation and proposed operation of Hugoton and the transfer to Hugoton by defendant of the natural-gas reserves referred to in Paragraph VI hereof. On November 10, 1948, the Commission issued another order in the same matter.

a copy of which is attached hereto as Exhibit "B" and made a part of this complaint. By said order, *inter alia*, defendant and Hugoton are required to show cause, if any there be, at a public hearing to be held before the Commission commencing on January 24, 1949, why the Commission should not by order, find, determine and direct:

- (i) That Panhandle and Hugoton cancel the contract, or purported contract, referred to in Paragraph VIII hereof, and that Panhandle return to Hugoton the aforesaid 810,000 shares of capital stock of Hugoton, and cause Hugoton to return to Panhandle the leases on the 96,164.21 acres referred to in Paragraph VI hereof, together with the \$675,000 in cash received by Hugoton as aforesaid from Panhandle.
- (ii) That Panhandle be prohibited from again transferring, assigning or conveying such leases without the consent of the Commission being first had and obtained.
- (iii) That Panhandle refrain from paying to its stockholders, as a dividend or otherwise, such 810,000 shares of the capital stock of Hugoton, and refrain from transferring the title to such shares of stock to such stockholders or to any person other than Hugoton.

XIII.

In order, *inter alia*, that Panhandle, which is a "natural-gas company" within the purview of the Act and hence subject to the Commission's jurisdiction, not relinquish its stock-ownership control of Hugoton, which latter company has not been declared by the Commission to be a "natural-gas company," the Commission in said order of November 10, 1948, further required that, pending final determination by the Commission of the questions to be presented at said January 24, 1949 hearing, Panhandle refrain from paying to its stockholders, as a dividend or otherwise, its 810,000 shares of the capital stock of Hugoton. The Commission further required in said order that Panhandle cause Hugoton to refrain from transferring, assigning or conveying the leases described in Paragraph VI hereof, or any of them, to any person, and from issuing or transferring any of its capital stock to any person; and that pending final determination by the Commission of the questions presented at the hearing, Hugoton refrain from transferring, assigning or conveying the leases described

in Paragraph VI hereof, or any of them, to any person, and from issuing or transferring any of its capital stock to any person.

XIV.

On November 10, 1948, immediately upon issuing its said order of November 10, 1948, the Commission informed defendant by telegram of such issuance and directed defendant to notify the Commission by November 12, 1948, that it would comply with the requirement of Paragraph (D) of such order. This, Panhandle failed and refused to do. Therefore, plaintiff avers on information as aforesaid and belief that defendant, Panhandle, is about to distribute the said 810,000 shares of the capital stock of Hugoton to the holders of common stock of Panhandle by way of dividend on or before November 17, 1948, and, unless restrained by this Court, will so distribute said stock.

XV.

Plaintiff is informed and believes and therefore alleges that a considerable volume of the capital stock of Hugoton is already being sold on the open market by common stockholders of defendant, Panhandle, on the basis of "if, as and when" the shares of stock are transferred to them by Panhandle; and the common stockholders of Panhandle are numerous.

XVI.

The proposed and threatened act of the defendant referred to in Paragraph XIV hereof will constitute a violation of the order of the Commission dated November 10, 1948, Exhibit "B" hereto.

XVII.

The delay rentals, renewal bonus payments and other exploration and development costs relating to the aforesaid natural-gas leases included by the Commission in Panhandle's operating revenue deductions in the rate proceedings referred to in Paragraph (c) of the Commission's order of November 10, 1948, Exhibit "B" hereto, amount to date to a sum in excess of \$665,000. The total estimated capital cost of the "Group A," "Group B" and "Group C" facilities authorized by the Commission for the purpose of enlarging Panhandle's system, referred to in Paragraphs (d) to (k), inclusive, of said order of November 10, 1948, is \$56,988,550. By reason of these facts, and by reason of

the facts and circumstances recited in Paragraphs (c) to (l), inclusive, and (r) and (s) of the order of November 10, 1948, which recitals are here incorporated as allegations, it may be that defendant could not lawfully transfer to Hugoton the natural-gas leases, without prior authorization by the Commission based on a finding that the public convenience and necessity permitted such transfer. Particularly by reason of the facts recited in Paragraphs (c),

(l) and (r) of said order, the public served by defendant's integrated system will suffer great injury and damage if the transfer of such gas leases be not lawful. Unless such public be protected by injunctive relief issuing out of this Court, the equitable ownership of such leases will be distributed amongst the common stockholders of defendant, by reason of the proposed transfer to them of the capital stock of Hugoton. Thereby the revocation and recalling by Panhandle of any dedication or pledge of the leases to the service of such public will be placed beyond retraction or power of abrogation by the Commission prior to an adjudication of the questions of the lawfulness of, and justification in the public interest for, the acts of defendant and Hugoton.

XVIII.

Unless action is taken to enjoin the following acts in violation of the order of the Commission of November 10, 1948, pending the aforementioned hearing before the Commission and its decision upon the questions there presented:

(i) the paying by defendant to its stockholders of the dividend consisting of the 810,000 shares of the capital stock of Hugoton, (ii) the delivery by defendant to such stockholders of certificates for such 810,000 shares of stock, (iii) the transfer of the title to such shares of stock by defendant to such stockholders or to any person, (iv) defendant's permitting Hugoton to transfer, assign or convey the leases described in Paragraph VI hereof, or any of them, to any person, and (v) defendant's permitting Hugoton to issue or transfer any of Hugoton's capital stock to any person—immediate, great and irreparable injury will be caused to the public served by the system of defendant.

12a WHEREFORE, plaintiff, the Federal Power Commission, prays:

1. That a summons issue out of this Court to the above-named defendant and that defendant be required to answer this complaint, paragraph by paragraph, but not under oath, answer under oath being hereby expressly waived.

2. That this Court issue a temporary restraining order (i) restraining defendant Panhandle, its officers, agents, representatives and employees, pending the issuance of the preliminary injunction hereinafter prayed for, from paying to its common stockholders as a dividend the 810,000 shares of the capital stock of Hugoton, from delivering to such stockholders certificates for such 810,000 shares, and from transferring the title to such shares of stock to such stockholders or to any other person; and (ii) requiring defendant, pending the issuance of the preliminary injunction hereinafter prayed for, to cause Hugoton to refrain from transferring, assigning or conveying the leases described in Paragraph VI hereof, or any of them, to any person, and from issuing or transferring any of its capital stock to any person.

3. That upon hearing, this Court, pending the final determination of this cause, issue a preliminary injunction restraining and enjoining defendant and its officers, agents, representatives and employees, from said acts.—

4. That upon final hearing of this cause, a decree be entered in favor of the plaintiff continuing such preliminary injunction in force and effect pending the final determination by the Commission of the questions presented at the hearing before it referred to in Paragraph XII hereof.

5. That plaintiff have all other and further general and equitable relief to which it may be entitled in the premises.

BRADFORD ROSS
General Counsel

WILLIAM S. TARVER
Assistant General Counsel

HOWELL PURDUE
Senior Attorney

WILLIAM MARVEL
United States Attorney
Attorneys for Plaintiff

Federal Power Commission

Duly sworn to by William S. Tarver jurat omitted in printing. (All in italics)

14a

*Exhibit "A" to Complaint*UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Nelson Lee Smith, Chairman; Thomas C. Buchanan,

Commissioners: Claude L. Draper, Leland Olds and Harrington Wimberly.

October 26, 1948

In the Matter
of
PANHANDLE EASTERN PIPE LINE COMPANY

Docket No.
G-1147

ORDER INSTITUTING INVESTIGATION

It appearing to the Commission that:

- (a) Panhandle Eastern Pipe Line Company (Panhandle Eastern) a natural-gas company subject to the jurisdiction of this Commission, operates a natural-gas pipe line from the Panhandle, Texas, and Hugoton, Kansas, and Oklahoma fields into the State of Michigan. The pipe line indirectly serves a population of 6,000,000 people in 309 communities. The natural gas which it transports and sells in interstate commerce is partly produced by Panhandle and partly purchased.
- (b) Panhandle Eastern has caused the formation of the Hugoton Production Company, to which it has transferred, in exchange for the Company's stock, approximately 97,000 acres in Grant and Stevens Counties, Kansas, in the Hugoton field. The natural gas reserves underlying such acreage have been estimated by Panhandle Eastern to be approximately 700 billion cubic feet. It is planned to distribute the stock of Hugoton Production Company to Panhandle Eastern stockholders as a dividend.
- 15a (c) Hugoton Production Company has entered into or is negotiating contracts for the sale of natural-gas produced from such acreage in Grant and Stevens Counties, Kansas, to a party or parties other than Panhandle Eastern.
- (d) Panhandle Eastern in support of its numerous and several applications to this Commission for certificates of public convenience and necessity pursuant

to Section 7 of the Natural Gas Act, as amended, has represented to the Commission the continuing availability to it of certain natural-gas reserves, and the issuance of such certificates has been justified, in part, by such representations.

The Commission orders that:

An investigation be and it hereby is instituted, pursuant to the provisions of Section 14 of the Natural Gas Act, of the facts and circumstances involved in the formation and proposed operation of the Hugoton Production Company and the transfer to said company by Panhandle Eastern of the natural-gas reserves referred to above.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance: October 26, 1948

16a

Exhibit "B" to Complaint

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before

Nelson Lee Smith, Chairman; Thomas C. Buchanan,

Commissioners: Claude L. Draper, Leland Olds and Harrington Wimberly.

November 10, 1948

In the Matter
of
PANHANDLE EASTERN PIPE LINE COMPANY

Docket No.
G-1147

ORDER SUPPLEMENTING ORDER OF OCTOBER 26, 1948, FIXING
DATE OF HEARING, REQUIRING PARTIES TO SHOW CAUSE,
AND REQUIRING MAINTENANCE OF STATUS QUO
PENDING COMMISSION DETERMINATION

It appears to the Commission from the investigation thus far conducted in the above-entitled proceeding and from the record in its Docket Nos. G-706 and G-876 which is incorporated herein by reference, that:

- (a) Panhandle Eastern Pipe Line Company (Panhandle) owns and operates, and at all times herein mentioned, owned and operated, an integrated na-

tural-gas-line system originating in the Hugoton natural-gas field of Kansas, Oklahoma and Texas and the Panhandle natural-gas field of Texas, and extending across the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into the State of Michigan.

- (b) At all times herein mentioned prior to October 1948, Panhandle owned certain oil and gas leases and gas leases on 96,164.21 acres of land located in Grant and Stevens Counties, Kansas, in the Hugoton natural-gas field, having estimated gas reserves of 700 billion cubic feet or in excess thereof.

17a (c) On September 23, 1942, the Commission issued its opinion and order in rate proceedings, Docket Nos. G-200 and G-207, establishing, among other things, Panhandle's proper rate base and proper operating revenue deductions for the purposes of such rate proceedings (3 FPC 273, *et seq.*). Most of the leases described in paragraph (b) hereof were represented by Panhandle in the said rate proceedings to be used and useful in the operation of Panhandle's then existing natural-gas pipeline facilities in the public service. Based upon said representations and the apparent dedication by Panhandle of such reserves to the service of the public to be supplied from such pipeline system, the Commission permitted said leases to be included in Panhandle's rate base, and permitted the delay rentals, renewal bonus payments and all other exploration and development costs relating to said leases to be included in Panhandle's operating revenue deductions.

- (d) On March 21, 1946, *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-706, Panhandle filed an application with the Commission for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, as amended, to authorize it to construct and operate certain facilities referred to as its "Group A" facilities and "Group B" facilities.

- (e) On March 5, 1947, *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-876, Panhandle filed an application with the Commission for a certificate of public convenience and necessity pursuant to said Section 7, as amended, to authorize

18a it to construct and operate certain facilities referred to as its "Group C" facilities.

(f) All of such proposed facilities consisted of compressor units, pipe lines, loop pipe lines and appurtenant facilities at points along the route of Panhandle's aforementioned integrated system, and were sought for the purpose of enlarging such system so as to enable Panhandle to deliver additional natural gas for distribution in communities then served by the system.

(g) In support of its application in Docket No. G-706 respecting the "Group A" and "Group B" facilities, Panhandle represented to the Commission that gas reserves held or controlled by it were adequate to justify the issuance of certificates of public convenience and necessity covering such facilities, and that it was able and willing properly to do the acts and to perform the service proposed. Panhandle represented and specified certain acreage in the Hugoton and Panhandle fields as containing such reserves, and included among such acreage the 96,164.21 acres referred to in paragraph (b) hereof, except for 25,065.88 acres, 73.9% of such 96,164.21 acres being thereby included as part of the acreage making up such reserves.

(h) Upon the strength of such representations, and the apparent dedication by Panhandle of such reserves to the service of the public to be supplied from such pipe-line system, the Commission, on June 4, 1946, entered an order whereby it found that Panhandle's gas supply was adequate to meet such deliveries as might result from the proposed operation of the "Group A" facilities, and that Panhandle was able and willing properly to do the acts and perform the service proposed, and whereby it issued a certificate of public convenience and necessity to Panhandle authorizing the construction and operation of said "Group A" facilities.

19a

(i) Upon the further strength of such representations and apparent dedication, the Commission, on November 30, 1946, entered an order whereby it found that Panhandle's gas supply was adequate to meet the requirements of the service to be rendered by means of the proposed "Group B" facilities and that Panhandle was able and willing properly to do the acts

and to perform the service proposed, and whereby it issued a certificate of public convenience and necessity to Panhandle authorizing the construction and operation of said "Group B" facilities.

- (j) In support of its application in Docket No. G-876 respecting the "Group C" facilities, Panhandle represented to the Commission that gas reserves held or controlled by it were adequate to justify the issuance of the certificate sought, and that it was able and willing properly to do the acts and to perform the service proposed. Panhandle represented and specified certain acreage in the Hugoton and Panhandle fields as containing such reserves, and included among such acreage, all of the 96,164.21 acres referred to in paragraph (b) hereof except for 1640 acres, 98.3% of such 96,164.21 acres being thereby included as part of the acreage making up such reserves.

20a (k) Upon the strength of such representations, and the apparent dedication by Panhandle of such reserves to the service of the public to be supplied from such pipe-line system, the Commission, on June 10, 1948, entered an order whereby it found that Panhandle's gas supply was adequate to meet the requirements of the service to be rendered by means of the proposed facilities and that Panhandle was able and willing properly to do the acts and to perform the service proposed, and whereby it issued a certificate of public convenience and necessity to Panhandle authorizing the construction and operation of the "Group C" facilities.

- (l) By its representations as described in paragraph (c) hereof Panhandle may have pledged the aforementioned reserves to service of the public by means of its then existing pipe line facilities, and by its representations as described in paragraphs (g), (h), (i), (j) and (k) hereof, Panhandle may have pledged the aforementioned reserves to the aforesaid services and facilities proposed by it and authorized by the Commission, and thereby may have incurred an obligation under the Natural Gas Act to continue to devote them exclusively to said services until determination by the Commission that they are not needed for the services so certificated.

(m) On September 22, 1948, Panhandle organized Hugoton Production Company (Hugoton), a Delaware corporation, which has an authorized capital stock consisting of 1,500,000 shares of \$1.00 par value.

21a

(n) On or shortly before October 11, 1948, Panhandle and Hugoton entered, or attempted to enter, into a contract, whereby Hugoton agreed to issue 810,000 shares of its stock to Panhandle, and Panhandle agreed, in consideration thereof, to pay to Hugoton the sum of \$675,000 in cash and to transfer, assign and convey to Hugoton the oil and gas leases and gas leases covering the 96,164.21 acres referred to in paragraph (b) hereof, together with certain oil leases covering 640 additional acres. It was further understood and agreed between Panhandle and Hugoton that Hugoton would promptly proceed to develop the acreage to be transferred to it and attempt to negotiate sales of gas therefrom to purchasers other than Panhandle; however, that beginning on January 1, 1965, Panhandle would have the option to purchase all gas produced from these leases at such price as Hugoton could then obtain from others. The parties contemplated that under expected rates of withdrawal of gas from the leases transferred to Hugoton during the period to 1965, Hugoton would produce and sell approximately 300 billion cubic feet of gas.

(o) On October 11, 1948, pursuant to such agreement or purported agreement, Hugoton issued the 810,000 shares of its stock to Panhandle; and the sum of \$675,000 in cash was paid by Panhandle to Hugoton, and the aforementioned leases were transferred, assigned and conveyed, or attempted to be transferred, assigned and conveyed, by Panhandle to Hugoton.

22a

(p) Such 810,000 shares of stock comprise all of the outstanding stock of Hugoton, and Hugoton is the wholly-owned subsidiary of Panhandle. All of the officers and directors of Hugoton are officers and directors of Panhandle. The sole office of Hugoton, other than its statutory office in the State of its incorporation, is the executive office of Panhandle in New York, New York. Hugoton has no executive officers or employees other than those employed by and paid by Panhandle. Its present assets consist

only of the \$675,000 cash and the aforementioned leases.

(q) On October 11, 1948, the Board of Directors of Panhandle declared a dividend in kind at the rate of one-half share of the capital stock of Hugoton for each of 1,620,000 outstanding shares of common stock of Panhandle. Panhandle proposes on or before November 17, 1948, to pay this dividend to its common stockholders.

(r) The loss of the gas reserves represented by the leases on the 96,164.21 acres referred to in paragraph (b) hereof, may tend to decrease the service life of the aforementioned "Group A," "Group B" and "Group C" facilities.

(s) In the aforementioned orders of the Commission of June 4, 1946, November 30, 1946 and June 10, 1948, issuing certificates of convenience and necessity, the authorization thereby granted, in the instance of each of such orders, was upon the express condition that the certificate should be effective only so long as Panhandle continued the operations thereby authorized in accordance with the provisions of the Natural Gas Act, as amended, and any pertinent rules, regulations or orders theretofore or thereafter issued by the Commission.

(t) By reason of the facts and circumstances hereinbefore set out, it may be that Panhandle could not lawfully transfer to Hugoton said natural gas leases without prior authorization by this Commission based on a finding that the public convenience and necessity permitted such transfer.

The Commission finds that:

Good cause exists for supplementing its order of October 26, 1948, in this proceeding as hereinafter provided, for holding a public hearing upon the matters and issues involved herein, for requiring Panhandle and Hugoton to show cause as hereinafter specified, and for maintaining the *status quo* pending the Commission's decision upon the questions presented.

The Commission orders that:

(A) The order instituting investigation, dated October 26, 1948, *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-1147, be and the same is hereby supplemented by adding Hugoton Production Company as a party respondent thereto.

(B) A public hearing be held commencing on January 24, 1949, at 10:00 a. m. (EST) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C., respecting the matters involved and the issues presented in these proceedings.

(C) At such hearing, Panhandle and Hugoton show cause, under oath, if any there be, why the Commission should not by order, find, determine and direct:

24a

- (i) That Panhandle and Hugoton cancel the contract, or purported contract, referred to in paragraph (n) hereof, and that Panhandle return to Hugoton the aforesaid 810,000 shares of capital stock of Hugoton, and cause Hugoton to return to Panhandle, and that Hugoton return to Panhandle, the leases on the 96,164.21 acres referred to in paragraph (b) hereof, together with the \$675,000 in cash received by Hugoton, as aforesaid from Panhandle.
 - (ii) That Panhandle be prohibited from again transferring, assigning or conveying such leases without the consent of the Commission being first had and obtained.
 - (iii) That Panhandle refrain from paying to its stockholders, as a dividend or otherwise, such 810,000 shares of the capital stock of Hugoton, and refrain from transferring the title to such shares of stock to such stockholders or to any person other than Hugoton.
- (D) Pending final determination by the Commission of the questions presented at the hearing, Panhandle refrain from the acts described in paragraph (C) (iii) hereof, and cause Hugoton to refrain from transferring, assigning or conveying the leases, described in paragraph (b) hereof, or any of them, to any person, and from issuing or transferring any of its capital stock to any person.
- (E) Pending final determination by the Commission of the question presented at the hearing, Hugoton refrain from transferring, assigning or conveying the leases, described in paragraph (b) hereof, or any of them, to any person, and from issuing or transferring any of its capital stock to any person.

25a (F) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission

LEON M. FUQUAY,
Secretary.

Date of Issuance: November 10, 1948

In United States District Court
Motion for Preliminary Injunction

Comes now the Federal Power Commission, plaintiff in this cause, and moves the Court for a preliminary injunction against the defendant, Panhandle Eastern Pipe Line Company (Panhandle), its officers, agents, representatives and employees, pending final hearing of this cause in accordance with the prayer therefor of the complaint, and for grounds for said motion says:

- (1) Unless a preliminary injunction issues, defendant will violate the Natural Gas Act and an order of the Commission issued pursuant thereto, before this cause can be brought on for final hearing.
- 26a (2) By such violation, the revocation or power of abrogation by the Commission of an agreement entered into on or about October 11, 1948, between defendant and Hugoton Production Company (Hugoton), involving the transfer by the defendant to Hugoton of certain oil and gas leases on 96,164.21 acres of land located in Grant and Stevens Counties, Kansas, in the Hugoton natural-gas field, will be prevented prior to a determination by the Commission in a proceeding pending before it entitled, "In the Matter of Panhandle Eastern Pipe Line Company, Docket No. G-1147," of questions relating to the lawfulness of such agreement.
- (3) By such violation, there is danger of immediate and irreparable injury to the public served by defendant's integrated natural-gas pipe line system originating in Kansas, Oklahoma and Texas and extending across the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into the State of Michigan, by reason of such public being deprived of the benefit of the gas reserves in the aforementioned acreage transferred by defendant to Hugoton.

In support of this motion, there is attached hereto as exhibits an affidavit of Edward L. Dunn, a copy of a telegram dated November 10, 1948, to defendant, Panhandle, from Leon M. Fuquay, Secretary of the Federal Power Commission, duly certified by said Secretary, and a certification of said Secretary.

27a. WILLIAM MARVEL
*United States Attorney
 for the District of Delaware*

BRADFORD ROSS
General Counsel

WILLIAM S. TARVER
Assistant General Counsel

HOWELL PURDUE
*Senior Attorney
 Attorneys for Plaintiff
 Federal Power Commission*

1800 Pennsylvania Avenue, N. W.
 Washington, D. C.

To Panhandle Eastern Pipe Line Company, defendant herein and to, its attorneys:

Please take notice that on the verified complaint filed herein, and the affidavit of Edward L. Dunn, the certified copy of a telegram dated November 10, 1948, to defendant, Panhandle, from Leon M. Fuquay, Secretary of the Federal Power Commission, and a certification of said Secretary, copies of which are served on you with this notice, the undersigned will bring the above motion for preliminary injunction for hearing before the Honorable Paul Leahy, District Judge, on the 23rd day of November, 1948, at 11:00 a.m., or as soon thereafter as counsel can be heard.

Dated this 13th day of November, 1948.

BRADFORD ROSS
General Counsel

WILLIAM S. TARVER
Assistant General Counsel

HOWELL PURDUE
*Senior Attorney
 Attorneys for Plaintiff*

28a

Exhibit "A" to Motion

AFFIDAVIT OF EDWARD L. DUNN

Washington,
District of Columbia, } ss.:

Edward L. Dunn, being first duly sworn, deposes and says:

That affiant is Examiner of Accounts for the Federal Power Commission;

That on October 26, 1948, in accordance with an order of said date *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-1147, affiant was assigned to make an investigation of the facts and circumstances involved in the formation and proposed operation of the Hugoton Production Company and the transfer to said company by Panhandle Eastern Pipe Line Company of certain natural-gas reserves.

That on October 28 and 29 and November 1, 1948, pursuant to such assignment, affiant inspected the files of Panhandle Eastern Pipe Line Company at the executive office of the company at 120 Broadway, New York, New York, and there met with the officers of the company. That from such inspection and statements made by company officers, affiant was informed that at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on October 11, 1948, the Board of Directors declared a dividend in kind at the rate of one-half share of the capital stock of Hugoton Production Company for each of the 1,620,000 outstanding shares of common stock of Panhandle Eastern Pipe Line Company; that such dividend is payable on November 17, 1948, to stockholders of record at the close of business October 29, 1948; that such dividend comprises all of the stock issued by Hugoton Production Company.

EDWARD L. DUNN.

Subscribed and sworn to before me this 12th day of November, 1948.

BERNICE P. STONE

*Notary Public in and for the
District of Columbia*

*'Exhibit "B" to Motion*UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

I, Leon M. Fuquay, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached page is a true copy of a telegram to Panhandle Eastern Pipe Line Company, delivered to a Western Union messenger for dispatching, on November 10, 1948. I further certify that as of the close of official business hours on November 12, 1948, there had not been received by the Commission the response requested in said telegram.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 12th day of November A. D., 1948, at Washington, D. C.

s/ LEON M. FUQUAY
Secretary

30a

November 10, 1948

Panhandle Eastern Pipe Line Company
1221 Baltimore Avenue
Kansas City 6, Missouri

Commission today ordered hearing January 24, 1949, in Docket G-1147 regarding Panhandle's right to transfer gas leases to Hugoton Production Company. Paragraph (D) of order requires Panhandle to refrain from transferring to its stockholders the capital stock of Hugoton pending final determination by Commission after said hearing. Advise by November 12, 1948 you will comply with this requirement.

LEON M. FUQUAY, *Secretary*
Federal Power Commission

In United States District Court*Restraining Order and Order Setting Motion for
Preliminary Injunction for Hearing*

At a session of said Court held in the Federal Building, Wilmington, Delaware, on the 13th day of November, A. D., 1948

PRESENT: Honorable Paul Leahy

District Judge

WHEREAS, in this cause it has been made to appear by the verified complaint of plaintiff, Federal Power Commis-

sion (referred to as Commission), filed herein, and the affidavit of Edward L. Dunn, a copy of a telegram dated November 10, 1948, to defendant, Panhandle Eastern Pipe Line Company (Panhandle) from Leon M. Fuquay, Secretary of the Federal Power Commission, duly certified by said secretary, and the certification of Leon M. Fuquay,

Secretary of the Federal Power Commission that at 31a the close of official business hours on November 12,

1948, Panhandle had not notified the Commission that it would comply with the direction of the Commission contained in said telegram, that there is presented to the Commission in a proceeding pending before it entitled, "*In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-1147;" questions relating to the lawfulness of an agreement entered into on or about October 11, 1948, between defendant and Hugoton Production Company (Hugoton), whereby defendant transferred to Hugoton certain oil and gas leases on 96,164.21 acres of land located in Grant and Stevens Counties, Kansas, in the Hugoton natural-gas field, and paid Hugoton the sum of \$675,000, in consideration of the issuance by Hugoton of 810,000 shares of its capital stock to Panhandle, and whereby defendant and Hugoton agreed that Hugoton would promptly proceed to develop the acreage to be transferred to it and attempt to negotiate sales of gas therefrom to purchasers other than defendant; that by order of the Commission issued November 10, 1948, said questions in said proceeding have been set down for hearing before the Commission on January 24, 1949, and Panhandle has been ordered by the Commission pending final determination by it of the questions presented at said hearing, to refrain from paying to its stockholders, as a dividend or otherwise, said 810,000 shares of the capital stock of Hugoton and to refrain from transferring the title to said shares of stock to such stockholders or to any person other than Hugoton; that Panhandle threatens, on or before November 17, 1948, and prior to determination by the Commission of the proceeding now before it, to distribute the said 810,000 shares of the capital stock of Hugoton, which is all of the outstanding stock of Hugoton, to the holders of common stock of Panhandle by way of dividend; that thereby the retraction or power of abrogation by the Commission of such agreement will be prevented; that unless defendant is immediately restrained from doing such threatened acts, it will violate said order of November 10, 1948, and immediate and irreparable injury to the public served by defendant's integrated natural-gas-pipe-line sys-

tem originating in Kansas, Oklahoma, and Texas, and extending across the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into the State of Michigan, will insue by reason of such public being deprived of the benefit of the gas reserves in the aforementioned acreage.

Now, THEREFORE, upon motion of plaintiff, it is ordered that defendant Panhandle Eastern Pipe Line Company, its officers, agents, representatives and employees, be and they are hereby temporarily restrained and enjoined from,

- (i) Paying to its stockholders the dividend consisting of 810,000 shares of the capital stock of Hugoton;
 - (ii) Delivering to such stockholders certificates for such 810,000 shares of stock, and
 - (iii) Transferring the title to such shares of stock to such stockholders or to any person or persons;
- and requiring defendant to cause Hugoton to refrain from transferring, assigning or conveying the leases described in Paragraph VI of the complaint, or any of them, to any person, and from issuing or transferring any of its capital stock to any person.

This restraining order will remain in force only until the hearing and determination of the application for a preliminary injunction herein, and shall expire within ten days after entry, unless within said time it is extended for a like period for good cause shown or unless defendant herein consents that it may be extended for a longer period. The matter of the issuance of a preliminary injunction is hereby set down for hearing on the 23rd day of November, 1948, at 11 o'clock, in the forenoon of said day, in the United States District Court, Room 218, in the Federal Building, in the City of Wilmington, Delaware. Defendant shall file its counter affidavits, if any, on or before the 19th day of November, 1948.

This order issued at 10:35 a.m., this 13th day of November, 1948, shall take effect upon service of a copy hereof, a copy of the complaint and a copy of the motion for preliminary injunction upon the defendant.

Let service of a copy of this order, together with the papers on which it was issued, be deemed good and sufficient service.

In United States District Court

Motion to Dissolve Temporary Restraining Order

PLEASE TAKE NOTICE that on the proceedings herein and on the affidavit of Hy Byrd sworn to November 16, 1948,

the defendant Panhandle Eastern Pipe Line Company will move the Court on the 18th day of November, 1948, at 2:00 P.M., or as soon thereafter as Counsel can be heard, before the Honorable Paul Leahy, United States District Judge, at the Courthouse of the United States District Court for the District of Delaware, Wilmington, Delaware, to dissolve the temporary restraining order obtained by the plaintiff Federal Power Commission without notice on November 13, 1948, on the ground that such order is not necessary for the prevention of irreparable injury to the public, and for such other and further relief as to the Court may seem just and proper. This motion is made under Rule 65 of the Rules of Civil Procedure.

Dated: Wilmington, Delaware, November 16, 1948

SOUTHERLAND, BERL & POTTER

Attorneys for defendant

Panhandle Eastern Pipe Line

Company

Delaware Trust Building

Wilmington 28, Delaware

Affidavit in Support of Defendant's Motion to Dissolve

Temporary Restraining Order

State of New York, }
County of New York. } ss.:

I, HY BYRD, being duly sworn, depose and say:

1. I am Vice President and Treasurer and a Director of Panhandle Eastern Pipe Line Company (hereinafter sometimes referred to as "Panhandle"), the defendant in this case; and I am Treasurer and a Director of Hugoton Production Company (hereinafter sometimes referred to as "Hugoton"). I am familiar with the transactions involved in this suit, and I make this affidavit in support of the motion made by the defendant to dissolve the temporary restraining order obtained by the plaintiff.

2. The agreement dated October 11, 1948, between Panhandle and Hugoton providing for the issuance and sale by Hugoton to Panhandle of 810,000 shares of common stock of Hugoton was approved by the Boards of Directors of Panhandle and Hugoton on October 11, 1948. On the same day such sale was consummated. Panhandle delivered to Hugoton the consideration for such shares of stock consisting of \$675,000 in cash and the conveyance by Panhandle to Hugoton of all of Panhandle's right, title and

interest in and to oil gas leases, gas leases, and oil leases on approximately 97,000 acres of undeveloped land located in Grant and Stevens Counties, Kansas, Panhandle retaining the option to purchase, on and after January 1, 1963, all or any specified portion of the gas being produced from such acreage. Hugoton delivered to Panhandle certificate No. 1 for 810,000 shares of common stock of Hugoton.

3. On the same day, *i. e.*, October 11, 1948, the Board of Directors of Panhandle adopted resolutions in the form annexed hereto and made a part hereof and marked Exhibit A declaring said 810,000 shares of common stock of Hugoton out of net profits or net assets or earned surplus earned subsequently to January 1, 1946, as a special dividend on the common stock of Panhandle, such shares of common stock of Hugoton to be distributed on November 17, 1948, to holders of common stock of Panhandle as they appeared of record at the close of business October 29, 1948, at the rate of one-half share of common stock of Hugoton for each share of common stock of Panhandle held by such holders, scrip certificates to be issued in lieu of fractional shares. The holders of common stock of Panhandle were advised of the declaration of such dividend in a letter mailed to them on October 11, 1948, a true and correct copy of which is annexed hereto and made a part hereof and marked Exhibit B.

4. On said date, *i. e.*, October 11, 1948, the Board of Directors of Hugoton duly adopted resolutions appointing The New York Trust Company of New York, New York, and United States Corporation Company, of Jersey City, New Jersey, transfer agents of the certificates for common stock of Hugoton and appointed said United States Corporation Company its agent with respect to the issuance of said scrip certificates.

5. Thereafter, *i. e.*, on October 19, 1948, Panhandle and Hugoton made arrangements with United States Corporation Company, of Jersey City, New Jersey, to distribute certificates for shares of stock and scrip certificates of Hugoton to the stockholders of Panhandle in satisfaction of said dividend. True and correct copies of letters dated October 19, 1948, from Panhandle and Hugoton respectively to United States Corporation Company are attached hereto and made a part hereof and marked Exhibits C and D.

6. Thereafter, *i. e.*, on October 29, 1948, Panhandle delivered to United States Corporation Company certificate No. 1 for 810,000 shares of common stock of Hugoton registered

in the name of Panhandle and assigned in blank for transfer to the owners of the common stock of Hugoton, i. e., the stockholders of record of Panhandle, at the close of business on October 29, 1948. A true and correct copy of the letter of Panhandle to United States Corporation Company transmitting said certificate for \$10,000 shares of the common stock of Hugoton is annexed hereto and marked Exhibit E.

7. The common stock of Hugoton has been widely traded on the "over the counter" market on a "when, as and if" basis since on or about October 13, 1948. The common stock of Panhandle is a listed security on the New York Stock Exchange, and since the record date of October 29, 1948, for determining the holders of common stock of Panhandle entitled to receive the dividend in shares of common stock of Hugoton, the common stock of Panhandle has been traded on the New York Stock Exchange on an "ex-dividend" basis, which means that trades made after the record date do not include the right to receive such dividend.

8. Up to November 15, 1948, United States Corporation Company prepared certificates of stock and scrip certificates of Hugoton aggregating 810,000 shares registered in the names of all of the holders entitled thereto and inserted the same in envelopes ready to mail, intending to mail said certificates on November 15 and November 16, 1948. Federal stock transfer stamps were attached to said certificate No. 1 for \$10,000 shares transferred from the name of Panhandle to the name of said respective stockholders and the said stamps were duly cancelled.

9. Annexed hereto and made a part hereof and marked Exhibit F is a form of letter dated November 17, 1948, which Panhandle proposed to have sent to the holders of its common stock in the same envelopes in which the certificates for common stock of Hugoton were to be sent.

10. By reason of all of the foregoing the stockholders of record of Panhandle as of October 29, 1948, became on said date the stockholders of Hugoton, and it is a manifest hardship on such stockholders of Hugoton to be deprived of the certificates evidencing their ownership of such stock.

11. I have been advised by counsel and verily believe that the Federal Power Commission is without power to impose upon Panhandle any of the restraints sought to be imposed by the order of said Commission dated November 10, 1948.

12. I am informed by counsel and verily believe that the Federal Power Commission is without power to cancel or direct the cancellation of the agreement dated 38a October 11, 1948 between Panhandle and Hugoton, or to require Panhandle to return to Hugoton the aforesaid mentioned 810,000 shares of common stock of Hugoton, or to require Hugoton to return to Panhandle the consideration for such stock; or to prohibit Panhandle from transferring, assigning or conveying the aforementioned gas leases covering acreage in Grant and Stevens Counties, Kansas, without first obtaining the consent of the Federal Power Commission; or to require Panhandle to refrain from paying to its stockholders as a dividend or otherwise, said 810,000 shares of common stock of Hugoton, or to require Panhandle to refrain from transferring the title to such shares of stock to its stockholders or to any other person.

13. Under date of October 18, 1948, Hugoton entered into a contract with Kansas Power and Light Company providing for the sale by Hugoton to said Kansas Power and Light Company for the period of fifteen years from November 1, 1949 to November 1, 1964, of gas to be produced by Hugoton from the gas leases in Grant and Stevens Counties, Kansas, acquired by it from Panhandle as aforesaid. Said contract provides, among other things, that all volumes of natural gas covered thereby are to be produced from wells located in the State of Kansas and Kansas Power and Light Company agrees that said gas is to be consumed by it or sold by it for consumption wholly within said State of Kansas. While the reserves in the acreage covered by the leases transferred to Hugoton amount to about 700 billion cubic feet, the total volume of gas to be sold by Hugoton to Kansas Power and Light Company for the entire period of said contract approximates only

39a 300 billion cubic feet, and as indicated above, Panhandle retains an option to purchase the balance of the reserves after the expiration of the contract. A true and correct copy of said contract dated October 18, 1948 between Hugoton and Kansas Power and Light Company will be handed up to the Court upon the argument of this motion.

14. No injury to the public will result from the transfer of the aforementioned gas leases by Panhandle to Hugoton. Such transfer resulted in a net decrease in Panhandle's reserves of less than 5%; and Panhandle now owns or controls, after such transfer, over 6,000 billion (6 trillion) cubic feet of gas, or more than enough gas reserves to serve

its entire system, including facilities authorized but not yet constructed, for more than 25 years. Such gas reserves of Panhandle are as adequate as those of any other certificated pipe line company and are more adequate than those of the great majority of such companies.

The present reserves are approximately 20% greater than those which Panhandle owned or controlled when it made applications for the installation of its Group A and Group B facilities in March, 1946.

Its reserves are only about 5% less than they were in March, 1947, when Panhandle applied for a certificate of public convenience and necessity to install its Group C facilities, the construction of which had not yet commenced. This decrease may reasonably be expected to be offset by increases in reserves resulting from the development of leases presently classified as marginal or unproven. But in any event may be regarded as having no material effect on the service which Panhandle will be capable of rendering.

40a It must be borne in mind however that the reserves which constitute the small diminution in the total reserves of Panhandle mentioned above are not in any sense lost to the public, but are now vested in Hugoton and are to be sold to Kansas Power and Light Company pursuant to the contract mentioned in paragraph 13 hereof for distribution to consumers in the State of Kansas.

15. Despite the allegations in the order of the Federal Power Commission attached to the complaint, Panhandle has never dedicated these reserves to consumers using its pipe-line system. It has been the practice in the industry to trade freely in gas leases, and the Federal Power Commission has never heretofore asserted the right to regulate such transactions, so far as I am aware. The Natural Gas Act expressly provides that it shall not apply to production of natural gas.

16. Not only was notice of the transactions between Panhandle and Hugoton referred to above given to all stockholders of Panhandle on October 11, 1948 through the medium of the letter annexed hereto and marked Exhibit B, but such transactions also received wide publicity in the press; and the Federal Power Commission was advised informally of such transactions on or about October 11, 1948.

WHEREFORE, I respectfully request that the temporary restraining order obtained by the plaintiff, Federal Power

Commission, against the defendant, Panhandle Eastern Pipe Line Company, on November 13, 1948, be dissolved and vacated, and that such other and further relief be granted the defendant, Panhandle Eastern Pipe Line Company, as to the Court may seem just and proper.

Hy Byrd:

Sworn to before me this
16th day of November, 1948.

Frank A. Meyer,
Notary Public in the State of N. Y.
Residing in Kings County.

41a *Exhibit "A" Affidavit.*

Resolutions of Board of Directors of Panhandle Eastern Pipe Line Company adopted October 11, 1948

WHEREAS it is anticipated that this Company will shortly receive pursuant to an Agreement heretofore approved at this meeting, 810,000 shares of Common Stock, of the par value of \$1.00 per share, of Hugoton Production Company;

WHEREAS this Board has determined to distribute such shares of stock to the holders of Common Stock of this Company; and

WHEREAS it appears from statements presented to this meeting and made a part of the minutes thereof there is available for dividends on the Common Stock of this Company net profits or net assets or earned surplus earned subsequently to January 1, 1946 of this Company (after allowing for payment of cash dividends heretofore at this meeting declared on the Common Stock of this company) in excess of all requirements of the tests prescribed in or required by the provisions of this Company's Certificate of Incorporation, as amended, its Indenture, dated as of May 1, 1946, with respect to the Serial Debentures due \$2,000,000 on each May 1, 1949 to 1971 inclusive, and its Credit Agreement dated July 29, 1946, as amended by Supplemental Agreement, dated August 1, 1947.

NOW, THEREFORE, BE IT RESOLVED that upon the receipt by this Company of 810,000 shares of Common Stock of Hugoton Production Company pursuant to the Agreement hereinabove mentioned, such shares of stock of Hugoton Production Company be, and the same hereby are, declared out of net profits or net assets, or earned surplus earned subsequently to January 1, 1946, of this Company as a special dividend on the Common Stock of this Company;

42a RESOLVED that such shares of Common Stock of Hugoton Production Company shall be distributed on November 17, 1948, to holders of Common Stock of this Company as they appear of record at the close of business October 29, 1948, in satisfaction of said dividend at the rate of one-half share of such Common Stock of Hugoton Production Company for each share of Common Stock of this Company held by such holders; provided that no fractional shares of such Common Stock of Hugoton Production Company shall be issued, but that in lieu of certificates for fractional shares such holders shall receive Scrip Certificates representing fractional interests and providing substantially as follows: that the bearers of such certificates upon surrender thereof on or before December 31, 1950 with other scrip certificates aggregating one or more whole shares shall be entitled to receive in exchange therefor a certificate or certificates for Common Stock of Hugoton Production Company for the full share or shares represented in the aggregate by the surrendered scrip certificates; that no dividends or interest shall be paid or shall accrue with respect to such scrip certificates, and that the holders thereof shall be entitled to no voting or other rights of stockholders; and that as soon as practicable after December 31, 1950, the Scrip Agent to be appointed with respect to such scrip certificates will sell for cash at public or private sale for the account of the holders of such scrip certificates the number of shares of Common Stock of Hugoton Production Company called for by the total number of scrip certificates outstanding at the close of business December 31, 1950, and that thereafter the holders of such scrip certificates, upon surrender thereof on or before December 31, 1953, will be entitled to receive their pro rata proportion of the net proceeds of such sales; and

43a RESOLVED that the officers of this Company be, and they hereby are, authorized and directed to take from time to time any and all such action as may be necessary or proper to carry out the intention of the foregoing resolutions, including, without limiting the generality of the foregoing, the making of any and all such arrangements as may be necessary or proper to provide for the issuance of and the carrying out of the terms of said Scrip Certificates.

Exhibit "B" to Affidavit

PANHANDLE EASTERN PIPE LINE COMPANY
 120 Broadway
 New York 5, N. Y.

To the Holders of Common Stock of
 PANHANDLE EASTERN PIPE LINE COMPANY:

At a meeting held October 11, 1948, the Board of Directors declared the regular quarterly dividend of 75 cents per share payable December 15, 1948, to stockholders of record at the close of business November 26, 1948. The Board of Directors also declared a dividend in kind at the rate of one-half share of the capital stock of Hugoton Production Company ("Hugoton") for each of the 1,620,000 outstanding shares of Common Stock of Panhandle Eastern Pipe Line Company ("Panhandle Eastern"). This dividend is payable on November 17, 1948 to stockholders of record at the close of business October 29, 1948. At the time of payment, there will be mailed to each holder of Common Stock a certificate or certificates for the number of full shares of Hugoton to which he is entitled, together with a transferable scrip certificate for any additional one-half share. Such scrip certificate may be combined with others and then surrendered to Hugoton for issue of a certificate for the number of full shares represented thereby.

44a Hugoton Production Company is a Delaware corporation, organized September 22, 1948 by Panhandle Eastern. Its authorized capital stock consists of 1,500,000 shares of \$1.00 par value, of which 810,000 shares were issued on October 11, 1948 to Panhandle Eastern for \$675,000 cash and oil and gas leases covering approximately 97,000 acres in Grant and Stevens Counties, Kansas. Such leases were transferred at a value of \$135,000. Upon payment of this dividend, all of the outstanding stock of Hugoton will be owned by the holders of the Common Stock of Panhandle Eastern, since this dividend comprises all of such outstanding stock.

The gas reserves under the leases which were transferred to and are now owned by Hugoton are estimated to be approximately 700 billion cubic feet. If such leases were retained by Panhandle Eastern, it is probable that they would not be developed for several years. It is expected that Hugoton will promptly proceed to develop this acreage and attempt to negotiate sales of gas therefrom to purchasers other than Panhandle Eastern. However, beginning January 1, 1965, Panhandle Eastern will have the right, under a contract which has been entered into between

it and Hugoton, to purchase all gas produced from these leases at such price as Hugoton could then obtain from others. Under contemplated rates of withdrawal of gas from the leases transferred to Hugoton during the period to 1965 Hugoton could produce and sell approximately 300 billion cubic feet of gas. Thus Panhandle Eastern's proven gas reserves will still exceed six trillion cubic feet after the transfer of such leases. Panhandle Eastern expects such reserves to be materially increased by development of leases which are presently classified as marginal or unproven.

The present assets of Hugoton consist only of the \$675,000 cash and leases on the acreage in Grant and 45a Stevens Counties, Kansas. Its present liabilities are its 810,000 shares of Common Stock and its commitment to sell gas from such acreage to Panhandle Eastern beginning 1965. Hugoton will send its first report to stockholders after the end of the current year. It is not expected that Hugoton will pay any cash dividends to its stockholders in 1948 or 1949.

The Board of Directors of Hugoton consists of the following, all of whom are directors of Panhandle Eastern: William G. Maguire, Edward Buddrus, Hy Byrd, Charles E. Main and Frank J. Lewis. Its officers are: William G. Maguire, President, Edward Buddrus, Vice-President, Hy Byrd, Treasurer and Leith V. Watkins, Secretary.

We are not now in a position to advise stockholders how they should treat this distribution for federal income tax purposes. Stockholders will be advised as soon as practicable of the opinion of the Company's tax consultants.

PANHANDLE EASTERN PIPE LINE COMPANY

W. G. MAGUIRE,

Chairman

October 11, 1948.

Exhibit "C" to Affidavit

PANHANDLE EASTERN PIPE LINE COMPANY

October 19, 1948

United States Corporation Company,

15 Exchange Place,

Jersey City 2, New Jersey.

*Dividend on Common Stock in shares of Common
Stock of Hugoton Production Company*

Gentlemen:

The undersigned has been informed by Hugoton Production Company that you are the Transfer Agent for

46a the Common Stock of that Company and that you have been notified of the declaration by our Board of Directors at its meeting held October 11, 1948, of a dividend in kind at the rate of one-half share of the Common Stock of Hugoton Production Company for each of the 1,620,000 outstanding shares of the Common Stock of the undersigned, payable November 17, 1948 to stockholders of record at the close of business October 29, 1948.

You are hereby requested to make all arrangements for the distribution of this dividend and upon completion of such distribution to render your statement of charges in duplicate directly to the undersigned.

Yours very truly,

PANHANDLE EASTERN PIPE LINE COMPANY

By HY BYRD

Vice-President and Treasurer

Exhibit "D" to Affidavit

HUGOTON PRODUCTION COMPANY

120 Broadway

New York 5, N. Y.

October 19, 1948

BY HAND

United States Corporation Company,

15 Exchange Place,

Jersey City 2, New Jersey

Gentlemen:

We have been informed by Panhandle Eastern Pipe Line Company that at a meeting of its Board of Directors held October 11, 1948, a dividend in kind at the rate of one-half share of the Common Stock of the undersigned for each of the 1,620,000 outstanding shares of the Common Stock of Panhandle Eastern Pipe Line Company, was declared payable November 17, 1948, to stockholders of record at the close of business October 29, 1948.

47a We have been requested by said Company to instruct you, as our Transfer Agent, to pay the dividend in conformity with the resolutions so adopted, a certified copy of which is attached. You are hereby requested to proceed under your authority, as the undersigned's Transfer Agent, in accordance with instructions from Panhandle Eastern Pipe Line Company with respect to this dividend.

Please submit your statement of charges in duplicate in conformity with the proposal made in your letter dated October 7, 1948, directly to Panhandle Eastern Pipe Line Company.

Very truly Yours,

HUGOTON PRODUCTION COMPANY.

By (signed) LEITH V. WATKINS,
Secretary.

~~Exhibit "F" to Affidavit~~

~~PANHANDLE EASTERN PIPE LINE COMPANY~~

October 29, 1948.

By HAND,
United States Corporation Company,
15 Exchange Place,
Jersey City 2, New Jersey.

*Dividend on Common Stock in Shares of Common
Stock of Hugoton Production Company*

Gentlemen:

Supplementing our letter to you dated October 19, 1948, we deliver to you herewith Certificate No. 1 for 810,000 shares of the Common Stock of Hugoton Production Company, which has been assigned in blank for transfer to the owners of the Common Stock of Hugoton Production Company as evidenced by a list of stockholders to be prepared by Chemical Bank & Trust Company as being the stockholders of record of Panhandle Eastern Pipe Line Company at the close of business today.

Please prepare and mail certificates of Hugoton Production Company to the stockholders thereof in accordance with the authorizations previously furnished to you.

Upon receipt of your advice as to the amount of Federal Stock Transfer Tax due on this transaction we will forward you our check in payment therefor.

Yours very truly,

PANHANDLE EASTERN PIPE LINE COMPANY

By HY BYRD,
Vice-President and Treasurer.

Exhibit "F" to Affidavit

PANHANDLE EASTERN PIPE LINE COMPANY

120 Broadway
New York 5, N. Y.

November 17, 1948

To the Holders of Common Stock of

PANHANDLE EASTERN PIPE LINE COMPANY:

The enclosed certificate or certificates are in payment of the dividend, payable in shares of the capital stock of Hugoton Production Company, declared by this Company on October 11, 1948 and payable to holders of Panhandle Eastern Pipe Line Company common stock at the close of business on October 29, 1948 at the rate of one-half share of Hugoton capital stock for each share of Panhandle Eastern Common Stock then owned. Scrip certificates for one-half share of the Hugoton stock may be combined with others and surrendered to its Scrip Agent, the United States Corporation Company, 15 Exchange Place, 49a Jersey City, N. J., for issue of a certificate for the number of full shares represented thereby. The New York Trust Company, 100 Broadway, New York 15, N. Y., and the United States Corporation Company, 15 Exchange Place, Jersey City, N. J., are Transfer Agents for the capital stock of Hugoton.

We quote from a ruling of the Commissioner of Internal Revenue regarding the manner in which you should treat this distribution for Federal income tax purposes:

"Upon the basis of the information submitted, it is held that the proposed distribution will constitute an ordinary dividend, within the meaning of and to the extent provided in section 115(a) of the Internal Revenue Code, taxable to the recipients under Section 22 (a) of the Code.

Each common stockholder of Panhandle will receive taxable income measured by the fair market value on November 17, 1948, of the Hugoton stock distributed to him . . .

It appears that the Hugoton stock will be traded in on the Over-the-Counter Market in New York City. In such case, the fair market value of the Hugoton stock will be the mean between the highest and lowest selling prices in that market on November 17, 1948, or if no sales be made on that date, on the nearest date upon which sales are made."

Since the declaration of this dividend, Hugoton has entered into a contract with The Kansas Power and Light Company, giving it a market, entirely within the State of Kansas, for its anticipated total production during the next fifteen years. The contract provides for the sale, after production and gathering, at satisfactory prices (the minimum price is 12 cents per M. C. F.), of specified quantities of gas in each of the years 1949-64, inclusive, with an option in The Kansas Power and Light Company to continue the contract thereafter if Panhandle Eastern does not elect to take Hugoton's Production after 1964. The total volume of gas to be sold by Hugoton for the entire period of the contract, as specified therein, approximates 300 billion cubic feet.

It is believed that Hugoton will require approximately \$3,000,000 by the end of its first year of operation for the development of its properties, by drilling and construction of necessary gathering lines and other facilities. Hugoton has not yet made any arrangements for financing these capital requirements, but its management does not anticipate difficulty in obtaining the required funds.

Very truly yours,

• PANHANDLE EASTERN PIPE LINE COMPANY.
By W. G. MAGUIRE,
Chairman of the Board.

In United States District Court

Affidavit of Edward L. Dunn

Washington,

District of Columbia.

{ ss.

EDWARD L. DUNN, being first duly sworn, deposes and says:

That affiant is Examiner of Accounts for the Federal Power Commission;

That on October 26, 1948, in accordance with an order of said date *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-1147, affiant was assigned to investigate the facts and circumstances involved in the formation and proposed operation of the Hugoton Production Company and the transfer to said company by Panhandle Eastern Pipe Line Company of certain natural gas reserves.

That on or about November 1, 1948, pursuant to said assignment, affiant conferred with Mr. W. C. Maguire, Chairman of the Board of Panhandle Eastern Pipe Line Company, and was informed by Mr. Maguire during said conference that the Hugoton Production Company had been organized by Panhandle because the Federal Power Commission had placed the valuable gas reserves of Panhandle in Panhandle's rate base, thereby preventing Panhandle from realizing the full value of said reserves, and that the assignment of gas reserves to Hugoton Production Company and the proposed operating plan of Hugoton Production Company had resulted from careful studies made for the purpose of avoiding regulation of the earnings from the sale of gas produced and gathered from said gas reserves; that if the Federal Power Commission persisted in its present rate fixing methods and procedures, Panhandle might form other production companies similar to Hugoton Production Company which company represented only the start of Panhandle's endeavor to realize additional and unregulated profits for its stockholders from its gas reserves;

That affiant has inspected Panhandle Eastern Pipe Line Company's books and records relating to the leases transferred by Panhandle to Hugoton and that the total original cost of said leases to Panhandle reported thereon was \$162,564.00 and that the annual expenses of carrying said leases was recorded in said books and records at \$66,890.80 for the year ending December 31, 1947.

That affiant on said date was informed by Mr. Maguire and Mr. Hy Byrd, Treasurer and Vice-President of Panhandle Eastern Pipe Line Company that the market price for shares of Hugoton then being traded on an "as if and when basis" was approximately \$13.50 per share; that such price established a current value of approximately \$12,000,000 for the leases transferred to Hugoton Production Company; that the market price of said stock would soon be at least \$20.00 a share and that said market price applied to the 810,000 shares issued by Hugoton would represent a market valuation of approximately \$16,200,000 for the leases transferred to Hugoton Production Company.

EDWARD L. DUNN

Subscribed and sworn to before me

this 17 day of November, 1948

Bernice P. Stone

Notary Public in and for the District of Columbia

In the United States District Court for the
District of Delaware
No. 1172 Civil Action.

FEDERAL POWER COMMISSION,

Plaintiff,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY,

Defendant.

Superior Courtroom No. 1

County Court House

Wilmington, Delaware

November 18, 1948

2:00 P. M., E. S. T.

*Hearing on Motion of Defendant to Dissolve
Temporary Restraining Order*

(FILE ENDORSEMENT OMITTED)

54-55 Before:

THE HONORABLE PAUL LEAHY, Chief United States
District Court Judge.

Appearances:

WILLIAM MARVEL, ESQUIRE, United States District Attorney for the District of Delaware, and WILLIAM S. TARVER, ESQUIRE, and HOWELL PURDUE, ESQUIRE, of the Washington D. C. bar, for the plaintiff.

E. ENNALLS BERL, ESQUIRE, and ROBERT P. PATTERSON, ESQUIRE, of the New York bar, for the defendant.

CARL F. FARBACH, ESQUIRE, for a Hugoton stockholder.

KEVIN MCINERNEY, ESQUIRE, for a Hugoton stockholder.

JAMES A. AUSTIN, ESQUIRE, for Hugoton stockholders.

GEORGE S. MUNSON, ESQUIRE, for a Hugoton stockholder.

GIRARD SMITH, a Hugoton stockholder.

57

Argument of Mr. Patterson.

Mr. PATTERSON.

59

Now, those transactions were public property. The stock of the Panhandle Company is listed on the New York Stock Exchange and full publicity was given to the entire transaction and informal notice given to the Federal Power Commission. We did not give them formal

notice or go to it with the transaction because in our view of the law, the Natural Gas Act, this phase of Panhandle's activities, to-wit, the production of gas, is not subject to the jurisdiction of the Federal Power Commission.

The COURT. Well, Judge Patterson, what was the purpose of giving them any notice?

Mr. PATTERSON. We just wanted them to be advised informally. We thought it might be a matter of interest to them, so we wanted to give them informal notice.

They didn't do anything about it until October 26th when they instituted a proceeding to investigate the transaction under Section 14 of the Natural Gas Act, and we have no objection at all to that. They have specific power under Section 14 to investigate the adequacy or inadequacy of gas reserves. And so the matter rested. They came up and looked at our books and records, and we had no objection to that. We facilitated that. And then we came to November 10th when they issued a supplemental order, and that was quite different. That order was supplemental
60 and docketed in the same docket and part of the same case as that of the original order of October 26th.

In that order they refer to quite a number of recitals, and then they come down to it—to enjoin the Hugoton Company as a party respondent—and set a date of hearing of January 24th, I believe, and then they say that the two companies shall show cause why the transaction shall not be rescinded. And then the order purports to state some subsidiary clauses to restrain Panhandle in the meantime from making delivery or allowing delivery to be made of the stock certificates of the Hugoton Company.

They wanted to know whether we would comply with that or not, and they got no satisfactory answer. We did answer them, but I will acknowledge that Mr. Tarver was not satisfied, and so he comes here on Saturday and gets a temporary restraining order from your Honor.

Now, that is in general the outline of the facts, and if I have omitted anything or misstated anything I am quite willing for Brother Tarver to interrupt right at this point.

We submit on that that the complaint on which the temporary restraining order was issued does not state a case for injunction or for temporary relief by way of the restraining order. We submit further that even if it
61 does, the transaction had already gone so far, Panhandle no longer being the owner of stock of Hugoton that thousands of persons owning the stock of Hugoton

—that the restraint on Panhandle against the final act of physical delivery of the stock certificates is of no value to the Federal Power Commission, but imposes a severe hardship and the liability of severe loss on the stockholders of the Hugoton Company—they being the people who were on October 29th stockholders of Panhandle, but there being no longer any identity between the stockholders.

The COURT. Before you discuss Section 20(a), when was the earliest date that the Commission was advised that you were going to distribute your stock?

Mr. PATTERSON. They were informally advised on October 12th, the day after the transaction. As soon as the transaction was entered into we sent a description of the transaction down to our attorneys in Washington, and we were advised by them that they had discussed the matter informally with members of the Federal Power Commission.

62 The COURT. In short, they knew you were going ahead with your program for a month—

Mr. PATTERSON. Yes, sir. That's right.

The COURT. All right, sir.

Mr. PATTERSON. They knew all details of the transaction at that time. They did not, however, examine the exact documents until a date around October 26th, I think, when they came up and were given copies—somewhere in that neighborhood.

Mr. TARVER. Twenty-ninth and thirtieth of October, and the first of November.

Mr. PATTERSON. That was when they came to the Panhandle office and made a detailed examination of the original papers and were furnished copies of everything they wanted.

74 Mr. PATTERSON. In the affidavit of Mr. Byrd at-
75 tached to my papers we make reference on page 6 to the contract existing between the Hugoton Company and Kansas Power and Light, and we say that a copy of the contract will be handed to the court upon the argument of this motion. The contract referred to is this contract here (indicating), and I will discharge the obligation now, imposed upon me by that little sentence in Mr. Byrd's affidavit, by handing a copy of that contract to your Honor.

The COURT. All right.

Argument by Mr. Farbach.

MR. FARBACH. I am Mr. Farbach, representing Investors Mutual, Inc. We are the owners of twelve thousand shares of Hugoton stock. We have been the absolute owners of the stock since the 29th day of October. We gained the right on the 11th of October when the dividend was declared. The Commission has been aware of that throughout that time. Not until the 10th or 11th of November did the Commission make any effort to prevent our getting—not the stock, not the right to the stock; they couldn't touch that—they tried to prevent our getting the certificate of stock. The result of that is that we own the stock and we can't do anything with it. We can't do anything with it until we can get the certificates. We own it. We
76 can't sell it. We can't deliver it. We can't trade in it in any way.

How long will it be? We don't know. It is a much longer time than we should be required to hold any security, any common stock. We therefore submit that it would work irreparable harm to ourselves and to all other stockholders to be required to hold on to the stock, to remain the owner without being able to deal in it, without being able to protect ourselves against fluctuations in the value, and perhaps take a substantial loss on it.

THE COURT. Have you made any commitments with respect to the shares?

MR. FARBACH. None whatsoever. We therefore oppose strenuously the temporary restraining order and ask that it be lifted.

THE COURT. It occurs to me, for the purposes of this motion, simply to dissolve the restraining order—regardless of what way I ultimately decide that motion I have grave doubt as to whether you can get any appellate review if that would become necessary, whereas if we were here arguing a temporary injunction, any order that I would enter would be appealable, and as is often the case counsel stipulated that for the purposes of argument on the restraining order it will be considered as being argument on the preliminary injunction—I don't
77 know whether you gentlemen have any thought on that matter or not.

MR. PATTERSON. If your Honor please, it would seem to the defendant to be in the interest of economy of time of court and counsel both, and we have no objection to advancing the date fixed by your Honor for argument on the

motion for preliminary injunction to November 18th, if agreeable to all parties.

The COURT. I have no feeling—

Mr. PATTERSON. Deem this hearing, in other words, not only upon our motion but upon the motion of the Federal Power Commission for a preliminary injunction.

Mr. TARVER. My sole reluctance to agreeing to that proposition possibly can be dissipated by Judge Patterson today. We are without complete knowledge as to the exact extent of this stock transfer. We don't know, nor has the affidavit by Panhandle stated, whether or not there has been any transfer of stock on the transfer books of Hugoton.

Mr. PATTERSON. We stopped in our tracks when we got a copy of your Honor's temporary restraining order. My understanding is this, that the U. S. Corporation Company, which is acting as agent for Hugoton Company, had the stock certificates made out and ready for mailing, but had

not mailed them. They are now in the possession of the U. S. Corporation Company. I might point out, as said in Mr. Byrd's affidavit, that Panhandle on or about October 29th delivered to the U. S. Corporation Company as agent of the Hugoton Company the certificate of stock for the 810,000 shares, endorsed in blank, for transfer to the stockholders and to be cancelled, but the matter rests in abeyance that way. As soon as we got word of what had transpired we held everything. The stock certificates, in other words, according to my information are there in the U. S. Corporation Company in New Jersey made out in the name of the proper stockholders, ready for mailing but not yet mailed.

Mr. TARVER. I understand. It is agreed that there has been no transfer on the transfer books of Hugoton Corporation?

Mr. PATTERSON. Oh, no. Quite the contrary. On the books of Hugoton Corporation the stockholders of record of October 29th are other stockholders and not Panhandle.

Mr. TARVER. There has been a formal transfer?

Mr. PATTERSON. On the books, but not delivery of the stock certificates, and I understand the transfer tax stamp is affixed. Is that right?

Mr. BYRD. Every act has been completed except the mailing of the stock certificates to the owners of the stock.

Argument of Mr. McInerney.

Mr. McINERNEY: May it please the court, Loyola University of Chicago, Illinois, is the owner of five thousand shares of Hugoton stock and still the owner of ten thousand shares of Panhandle stock. Judge Patterson has referred to several reasons why the present motion should be granted, but to us it seems the short reason is that the Commission's order of November 10th was made at a time when Panhandle was no longer the owner of the Hugoton stock, but Loyola and other similarly situated stockholders of Panhandle had become owners. That is because on October 29th Panhandle had delivered to the United States Corporation Company of New Jersey the shares of Hugoton endorsed in blank, signed in blank for transfer, with directions to mail the stock out as soon as it could be done in the regular routine, to the stockholders of Panhandle.

Now, it seems to us that after October 29th no order that the Commission could make would be of any force and effect. We are willing to assume purely for the purpose

80 of arguing that the Commission while Panhandle was still the owner of the shares of Hugoton might have made an order inhibiting the dividend. It might perhaps—just for the sake of argument—have prevented the making of the dividend. However, after Loyola had become the owner of these shares—that is, after October 29th—it seems to us that any order of the Commission respecting the position or the disposal of these shares is a nullity on its face. We therefore think that this court should not lend its equitable powers to the interference with Loyola's possession of its own property and should not lend its support to the Commission's order of November 10th which is, we think, invalid on its face.

Now, it may be suggested by Mr. Tarver that a delay of, say, five or ten days or of a month is a matter of no great moment, but to Loyola and similarly situated stockholders it is a matter of tremendous importance. In five or ten days or a month the price which Loyola might get for these shares may be one-half of what it is presently. The present market price of Hugoton I think is around eleven; it may decline to six in a week's time, as we have had recently demonstrated.

The COURT. I will ask you the same question I asked Mr. Farbach. Have you any commitments with respect to your shares?

81 Mr. McINERNEY. So far as I know we have none. I don't know whether Loyola would sell its shares or retain them, but it seems to me that under the circumstances the court should not even continue the present restraining order but should immediately allow these stockholders to have their property to do with as they please, as their interests dictate.

Thank you, your Honor.

Argument of Mr. Austin.

Mr. AUSTIN. May it please the court, we represent the Clark family and such foundations established by them, which together are the owners at the present time of 61,633 shares of Hugoton, and they continue to own 122,366 shares of Panhandle. Now, in each instance that represents approximately eight per cent of the outstanding stocks of those companies, and I think it is the largest independent block of stock that there is.

Now, our people want their stock. It is a simple thing. I don't understand that the Federal Power Commission has any jurisdiction whatsoever to interfere with the declaration and payment of a dividend legally, and I don't understand that they alleged that they do have. I certainly endorse everything that Judge Patterson has said as to their powers with respect to the sale of acreage, but whether or not it could be established or will be established that they have some jurisdiction over that transfer, I say they have none whatsoever when it comes to the delivery of

82 these certificates of stock which we now own and which now stand in our names. Now, it is a normal right of property that one be allowed to dispose of it. I don't know what the purpose of the foundations is, but if the opportunity advantageously presents itself to dispose of stock in the next few days, I think it should be done if that opportunity presents itself.

Now, in answer to your Honor's question of the other gentlemen, I certainly know of no commitments on this stock at this time, but I am informed that certain stockholders have inquired of Panhandle as to whether they should engage in trade in it, in view of the existence of this order, when they might violate State laws pertaining to trusts—

The COURT. The reason for the question is simply that it is one of the elements which equity takes into consideration in balancing the entire picture.

Statement of Mr. Munson.

Mr. MUNSON. I represent the Insurance Company of North America. We are not as big a stockholder as some, but we have thirty thousand shares of Panhandle and fifteen thousand shares of Hugoton. In addition to that we have committed ourselves on the open market to buy ten thousand more, so when you ask if we have a commitment, we have a commitment, and I support thoroughly Judge Patterson's argument.

Mr. AUSTIN. The question it seems to me, Judge, is not of our commitments but on the question of the restraint. The restraint applies not only to whether this dividend is distributed, but when issued, trade in the stock, and we urge that we be allowed to get the stock which stands in our name.

Argument of Mr. Tarver.

Mr. TARVER. May it please the court, Judge Patterson and I have agreed that we are willing that this argument be considered as argument on the motion for preliminary injunction as well as this. Is that right, Judge Patterson?

84 Mr. PATTERSON. Yes.

Mr. TARVER. * * * In addition we now ask leave to amend our complaint so as to invoke the jurisdiction of this court on the additional ground of its general equity powers.

93 The COURT. Well, what is the blackest picture you can hope to find growing out of this transaction, Mr. Tarver?

Mr. TARVER. The blackest picture growing out of this transaction is that the life of Panhandle's pipe line, which is tested not by the pipe in the ground—because that lasts a long time—but by the volume of gas that it has to run through that pipe, will be cut short in approximately five years, that Panhandle's rate payers will be deprived of the money they have contributed to Panhandle for delay rentals and the maintenance of these gas reserves. In addition Panhandle is now, and it is a matter of such general knowledge that I think your Honor can take almost judicial notice of it, extremely short of gas. When I say "extremely short of gas" I don't mean that its reserves are insufficient to serve its customers, but its pipe line facilities are grossly insufficient to serve its customers. There has been some

legal question arising out of the inability of Panhandle to satisfy all of the requirements of its customers.

94 Mr. PATTERSON. Please don't take my silence at this point as in any sense acquiescence in that statement. It has the biggest gas reserves of any company in the business. The gas reserves are bigger than the facilities to take it out.

Mr. TARVER. That is what I said, Judge Patterson.

Mr. PATTERSON. I thought it was the other way around. There is no inability to supply gas, and there won't be for thirty or forty or fifty years. We are in a better position than any other gas company—

Mr. TARVER. Panhandle has no shortage of gas in the ground, and there is no contention that it has, but it does have a shortage of pipe line facilities.

Mr. PATTERSON. I agree in what Colonel Tarver says when he says commitments to customers and consumers up the line exceed pipe line capacity, and that is because these gentlemen have cut our price way down and these people want our gas.

Mr. TARVER. Just recently in Illinois there was a case decided involving a shortage on Panhandle's lines, so I think your Honor can take judicial notice of that.

Well, to proceed, Panhandle because of the insufficiency of its facilities to serve the requirements of its customers—the pipe line facilities—has applied to the Federal Power Commission in the years 1946 and 1947 for three certificates of public convenience and necessity which are required if it is to construct new pipe line facilities. In

95 those applications Panhandle has represented that its reserves including these very reserves now involved were available to serve the facilities sought to be certificated by the Federal Power Commission. On the basis of that representation of Panhandle, among other representations of Panhandle, the Federal Power Commission has issued certificates of public convenience and necessity.

99 The COURT. Well, can you refer me to any authority that a company that has received a certificate must receive the approval of the Commission before it can divest itself of any of its assets?

Mr. TARVER. No, your Honor, I cannot. We contend that that is an implied obligation under the certificate sections of the act,

100 Mr. TARVER.

102 May it please the court, this is the first proceeding of this nature before the Federal Power Commission.

105 If the transfer is illegal, then everything in connection with the transaction is tainted with illegality; the declaration of the dividend is beyond the power of the corporation, and this court should exercise its injunctive powers to halt the transaction until the Federal Power Commission can determine all the facts, all the interests of the public, which interests are peculiarly committed to its care by statute, and determine whether or not there is an injustice and prejudice and disadvantage and preference—which is a determination of fact. Those are matters which can be determined, and a Commission is specifically charged with determining them, only by the Commission.

The COURT. Well, what about the publicly held stock in the meantime? Isn't there a public interest on that side too?

Mr. TARVER. I think it is not—

The COURT. I mean, I think it is very admirable, the devotion you have to the rate payer, but what about the widow or orphan who owns a share of stock?

106 Mr. TARVER. Well, now, I think we worry too much, if the court please—

The COURT. You amended your complaint to call upon the application of equitable principles. Is it conceded that that is a consideration that I should weigh?

Mr. TARVER. If you are exercising solely the equitable powers vested in the court, yes.

110 Mr. TARVER. As your Honor knows, we did not come here intending to argue the motion for a preliminary injunction at this time, and therefore we did not come with any proof with respect to the total volume of Panhandle reserves. All we have is with respect to the percentage of the reserves. Panhandle has set out in an affidavit that was filed that these constitute five per cent of the reserves. The Commission does not concede that to be the fact for the reasons set forth in the memorandum filed with you today. I do not think that that is a point

111 of such overwhelming weight that it will cause your Honor to decide one way or the other, but I did want your Honor to take into consideration that had we come

here to present the matter on the motion for preliminary injunction we would have had sworn testimony with respect to that matter. The only difference between us is as to the percentage of total reserves that these reserves represent, and the effect of the life of the pipe line.

The COURT. Well, is that difference crucial?

Mr. TARVER. In my opinion, sir, it is a matter only of degree. I don't think that it will affect your Honor's ultimate decision.

120 *Reply of Mr. Traver.*

Mr. TARVER.

122 Judge Patterson said we would agree that there was constant trading in gas leases. Of course there is constant trading in gas leases. Companies switch leases according to their mutual advantages, but I submit that it is for the Commission to determine whether or not transfer of leases to this extent, to this magnitude, constitutes what amounts to a prejudice to the customers of Panhandle.

The COURT. Have you ever attempted before to police the industry in this fashion?

Mr. TARVER. No. This is the first time we have been faced with the problem. It is the first which has been presented to us in this way.

129 In United States District Court
 Affidavit of William G. Maguire

State of Delaware. }
County of New Castle. } ss.:

WILLIAM G. MAGUIRE, being first duly sworn, deposes and says:

I am the Chairman of the Board of Panhandle Eastern Pipe Line Company.

I have read the affidavit of Edward L. Dunn filed in this cause and I deny that I made the following statement contained therein, "that the Hugoton Production Company had been organized by Panhandle because the Federal Power Commission had placed the valuable gas reserves of Panhandle in Panhandle's rate base, thereby preventing Panhandle from realizing the full value of said reserves,

and that the assignment of gas reserves to Hugoton Production Company and the proposed operation plan of Hugoton Production Company had resulted from careful studies made for the purpose of avoiding regulations of the earnings from the sale of gas produced and gathered from said gas reserves; that if the Federal Power Commission persisted in its present rate fixing methods and procedures, Panhandle might form other production companies similar to Hugoton Production Company which company represented only the start of Panhandle's endeavor to realize additional and unregulated profits for its stockholders from its gas reserves;"

The inference to be derived from the statement incorrectly attributed to me by Mr. Dunn is that the primary objective for the formation of Hugoton Production Company and the assignment of the gas leases to it was to avoid Federal Power Commission regulation. Such is not the fact. This program was evolved as a result of negotiations between Panhandle Eastern Pipe Line Company and The Kansas Power and Light Company as being the most mutually satisfactory method, from an operating standpoint, of supplying an adequate quantity of gas produced in Kansas for the people of Kansas.

Panhandle Eastern Pipe Line Company has no plans for forming other production companies similar to Hugoton Production Company. It is to be borne in mind that Panhandle has more than \$100,000,000 investment in transmission facilities. In my opinion, the Board of Directors will continue to protect Panhandle's huge investment in such transmission facilities by maintaining an adequate gas reserve.

I further deny that either I or Mr. Byrd stated to Mr. Dunn as set forth in this affidavit that "the market price of said stock would soon be at least \$20 a share."

WILLIAM G. MAGUIRE:

Sworn to before me this
21st day of November, 1948.
Elizabeth O'Neill.

131 In United States District Court

Memorandum

The complaint and the moving papers (considering also defendant's papers) do not show any basis for the relief sought by plaintiff. Accordingly, an order denying plain-

tiff's motion for a preliminary injunction will be entered on the expiration of the outstanding restraining order, i. e., December 1, 1948. Defendant may submit proposed findings and conclusions in accordance with Rule 52(a) of the Rules of Civil Procedure.

(s) PAUL LEAHY,
Ch. J.

Dated: November 26, 1948.

In United States District Court

Answer of Intervener, Gregory B. Smith

Intervener, GREGORY B. SMITH, by his attorney, ARTHUR G. CONNOLLY, answering the complaint herein, respectfully alleges and shows to this court:

1. Upon information and belief, denies each and every allegation contained in paragraphs "I", "XVI" and "XVIII" of the complaint.

2. Denies each and every allegation contained in paragraph "V" of the complaint except admits that defendant, Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle"), owns and operates, and at all times mentioned in the complaint, owned and operated, an integrated natural-gas pipe line system originating in the Hugoton natural-gas field of Kansas, Oklahoma and Texas and the Panhandle natural-gas field of Texas, and extending across the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into the State of Michigan; and that, by means of such system, defendant Panhandle, pursuant to contracts obligating it so to do, and on file with the Federal Power Commission as rate schedules under the Natural-Gas Act, supplies gas to distributing companies along the route thereof serving in excess of 1,500,000 customers.

3. Denies each and every allegation contained in paragraph "VII" of the complaint except admits that on September 22, 1948, Hugoton Production Company (hereinafter referred to as "Hugoton"), a Delaware corporation, was organized and that it has an authorized capital stock consisting of 1,500,000 shares of \$1.00 par value.

4. Denies each and every allegation contained in paragraph "VIII" of the complaint except admits that on or shortly before October 11, 1948, defendant, Panhandle, and Hugoton, entered into a contract whereby Hugoton agreed to issue 810,000 shares of its stock to Panhandle, and Pan-

handle agreed, in consideration thereof, to pay to Hugoton the sum of \$675,000.00 in cash and to transfer, assign and convey to Hugoton the oil and gas leases and gas leases covering 96,164.21 acres located in Grant and Stevens

133 Counties, Kansas, in the Hugoton natural-gas filed, together with certain oil leases covering 640 additional acres; and that it was further understood and agreed between Panhandle and Hugoton that Hugoton would promptly proceed to develop the acreage to be transferred to it and attempt to negotiate sales of gas therefrom to purchasers other than Panhandle; and that it was further agreed that beginning on January 1, 1965, Panhandle would have the option to purchase all gas produced from said leases at such price as Hugoton could then obtain from others; and that the parties contemplated that under expected rates of withdrawal of gas from the leases transferred to Hugoton during the period to 1965, Hugoton would produce and sell approximately 300 billion cubic feet of gas.

5. Denies each and every allegation contained in paragraph "IX" of the complaint except admits that on October 11, 1948, pursuant to the last-mentioned agreement, Hugoton issued the 810,000 shares of its stock to Panhandle; and that the sum of \$675,000 in cash was paid by Panhandle to Hugoton and that the aforementioned leases were transferred, assigned and conveyed by Panhandle to Hugoton.

6. Denies each and every allegation contained in paragraph "X" of the complaint except admits that said 810,000 shares of stock comprise all of the outstanding stock of Hugoton; that all of the officers and directors of Hugoton are officers and directors of Panhandle; and that Hugoton has no executive officers or employees who are not also executive officers and employees of Panhandle.

134 7. Denies each and every allegation contained in paragraph "XI" of the complaint except admits that on October 11, 1948, the Board of Directors of Panhandle declared a dividend in kind at the rate of one-half share of the capital stock of Hugoton for each of the 1,620,000 outstanding shares of common stock of Panhandle.

8. Denies each and every allegation contained in paragraph "XII" of the complaint except admits that on October 26, 1948, the Commission issued an order *In the Matter of Panhandle Eastern Pipe Line Company, Docket No. 6-1147*, a copy of which is attached to the complaint herein.

as Exhibit A, instituting an investigation of the facts and circumstances involved in the formation and proposed operation of Hugoton and the transfer to Hugoton by Panhandle of the Hugoton natural-gas reserves above-mentioned; that on November 10, 1948, the Commission issued another order in the same matter, a copy of which is attached to the complaint; that by said order, among other things, the Commission purported to require Panhandle and Hugoton to show cause at a public hearing scheduled for January 24, 1949, why the Commission should not by order find, determine and direct

(i) That Panhandle and Hugoton cancel the contract referred to in paragraph 4 hereof and that Panhandle return to Hugoton the aforesaid 810,000 shares of capital stock of Hugoton and cause Hugoton to return to Panhandle the leases on the 96,164.21 acres referred to in paragraph 4 hereof, together with the \$675,000.00 in cash received by Hugoton as aforesaid from Panhandle.

(ii) That Panhandle be prohibited from again transferring, assigning or conveying such leases without the consent of the Commission being first had and obtained.

(iii) That Panhandle refrain from paying to its stockholders, as a dividend or otherwise, such 810,000 shares of the capital stock of Hugoton and refrain from transferring the title to such shares of stock to such stockholders or to any person other than Hugoton.

9. Upon information and belief, denies each and every allegation contained in paragraph "XIII" of the complaint except admits that in said order of November 10, 1948, the Commission purported to require that, pending final determination by the Commission of the questions to be presented at such January 24, 1949 hearing, Panhandle refrain from paying to its stockholders, as a dividend or otherwise, its 810,000 shares of the capital stock of Hugoton; and that the Commission further purported to require in said order that Panhandle cause Hugoton to refrain from transferring, assigning or conveying the above-mentioned leases or any of them, to any person, and from issuing or transferring any of its capital stock to any person and, pending final determination by the Commission of the questions presented at the hearing, that Hugoton refrain from transferring, assigning or conveying the above-

136 mentioned leases, or any of them, to any person and from issuing or transferring any of its capital stock to any person.

10. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "XIV" of the complaint.

11. Upon information and belief, denies each and every allegation contained in paragraph "XVII" of the complaint except denies any knowledge or information sufficient to form a belief as to the truth of the allegations that the delay rentals, renewal bonus payments and other exploitation and development costs relating to the aforesaid natural-gas leases included by the Commission in Panhandle's operating revenue deductions in the rate proceedings referred to in Paragraph (c) of the Commission's order of November 10, 1948, amount to a sum in excess of \$665,000.00, and that the total estimated capital cost of the "Group A", "Group B" and "Group C" facilities authorized by the Commission for the purpose of enlarging Panhandle's system referred to in Paragraphs (d) to (k), inclusive, of said order of November 10, 1948, is \$56,998,550.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE
COMPLAINT HEREIN

12. That on or about October 29, 1948, Panhandle ceased to be the owner of the 810,000 shares of the capital stock of Hugoton and 500 of said shares at said time became the property of the intervenor.

13. That since October 29, 1949, the Federal Power
B37 Commission and this Court have been without any jurisdiction or right to interfere with the intervenor's ownership, possession, control and disposition of said 500 shares of Hugoton stock or to cause to be withheld from the intervenor the certificates evidencing his ownership of said 500 shares of Hugoton stock.

14. That the Commission's aforesaid order of November 10, 1948, and this court's temporary restraining order of November 13, 1948, as continued by its order of November 22, 1948, unreasonably deprive intervenor of his property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

15. That if this court should grant the injunction as prayed for in the complaint or should continue its temporary restraining order of November 13, 1948, great and irreparable injury would be caused to the intervenor herein and the other similarly situated stockholders of Hugoton and of Panhandle.

WHEREFORE, intervenor, GREGORY B. SMITH, prays:

1. That this Court's temporary restraining order of November 13, 1948, be dissolved forthwith;
2. That the complaint herein be dismissed;
3. That intervenor have such other and further relief as to the Court may seem just.

ARTHUR G. CONNALLY,
Attorney for Intervenor,
228 Delaware Trust Building,
Wilmington 28, Delaware.

SMITH & MCINERNEY, of Counsel,
Office and Post Office Address,
1 East 57th Street,
New York 22, N. Y.

Dated: November 23, 1948.

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In United States District Court

*Answer of Interveners, Stephen Carlton
Clark, et al.*

Interveners, STEPHEN CARLTON CLARK, FREDERICK AMBROSE CLARK, SUSAN VANDERPOEL CLARK, FLORENCE L. S. CLARK, STEPHEN CARLTON CLARK, JR., ALFRED CORNING CLARK, HENRY R. LABOUISSSE, JR., PAUL S. KERR, MARTHA H. KERR, WATSON BEACH DAY, LILLIAN W. DAY, MARY COBB LOWE, ELEANOR S. DOOLITTLE, ELINOR D. JOHNSTON, ELSIE G. PENDLETON, CHARLES E. MAIN, LAURA S. MAIN, KENNETH A. MAIN, individually, and FREDERICK AMBROSE CLARK and WATSON BEACH DAY, as Trustees under Deed of Trust made by Frederick Ambrose Clark dated June 19, 1918, WALTER C. FLANDERS and WATSON BEACH DAY, as Trustees under Deed of Trust made by Stephen Carlton Clark dated June 26, 1917, WATSON BEACH DAY and STEPHEN CARLTON CLARK, as Trustees under Deed of Trust made by Stephen Carlton Clark dated October 15, 1919, under Deed of Trust made by Stephen Carlton Clark dated April 26, 1932, under Deed of Trust made by Stephen Carlton Clark dated August 5, 1935, under Deed of Trust made by Alfred Corning Clark dated August 27, 1942, under Deed of Trust made by Frederick Ambrose Clark dated June 6, 1944, under Deed of Trust made by Frederick Ambrose Clark dated June 29, 1944, and as surviving Trustees under Deed of Trust made by Stephen Carlton Clark, Edward S. Clark, Robert S. Clark and Frederick Ambrose Clark dated May 18, 1947, CHARLES

E. MAIN and WATSON BEACH DAY, as Trustees under Deeds of Trust made by Stephen Carlton Clark for Stephen Carlton Clark, Jr. and Alfred Corning Clark dated June 139 5, 1940, WATSON BEACH DAY and PAUL S. KERR, as Trustees under Deed of Trust made by Stephen Carlton Clark, Jr., dated July 13, 1943, WATSON BEACH DAY, CHARLES E. MAIN and PAUL S. KERR, as Trustees under Deed of Trust made by Stephen Carlton Clark dated May 10, 1946, and THE CLARK FOUNDATION, THE SCRIVEN FOUNDATION, INC. and THE MARY IMOGENE BASSETT HOSPITAL, all being membership corporations organized and existing under the Membership Corporations Law of the State of New York, and LEATHER STOCKING CORPORATION, a corporation organized and existing under the laws of the State of New York, by their attorneys, Richards, Layton and Finger, answering the complaint herein respectfully allege:

1. Upon information and belief interveners deny each and every allegation contained in Paragraph I of the complaint.

2. Interveners admit the allegations contained in Paragraphs II, III, IV of the complaint.

3. Answering the allegations of Paragraph V of the complaint, interveners admit that defendant, Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle"), owns and operates, and at all times mentioned in the complaint, owned and operated, an integrated natural-gas pipe line system originating in the Hugoton natural-gas field of Kansas, Oklahoma and Texas and the Panhandle natural-gas field of Texas, and extending across the States of Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into the State of Michigan; and that, by means of such system, defendant Panhandle, pursuant to contracts 140 obligating it so to do, and on file with the Federal Power Commission as rate schedules under the Natural-Gas Act, supplies gas to distributing companies along the route thereof serving in excess of 1,500,000 customers. Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph V of the complaint.

4. Interveners admit the allegations contained in Paragraph VI of the complaint.

5. Answering the allegations of Paragraph VII of the complaint, interveners admit that on September 22, 1948, Hugoton Production Company (hereinafter referred to as "Hugoton"), a Delaware corporation, was organized and that it has an authorized capital stock consisting of 1,500,000

shares of \$1.00 par value. Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph VII of the complaint.

6. Answering the allegations of Paragraph VIII of the complaint, interveners admit that on or shortly before October 11, 1948, defendant, Panhandle, and Hugoton entered into a contract whereby Hugoton agreed to issue 810,000 shares of its stock to Panhandle, and Panhandle agreed, in consideration thereof, to pay to Hugoton the sum of \$675,000.00 in cash and to transfer, assign and convey to Hugoton the oil and gas leases and gas leases covering 96,164.21 acres located in Grant and Stevens Counties, Kansas, in the Hugoton natural-gas field, together with certain oil leases covering 640 additional acres; and that it

141 was further understood and agreed between Panhandle and Hugoton that Hugoton would promptly proceed to develop the acreage to be transferred to it and attempt to negotiate sales of gas therefrom to purchasers other than Panhandle; and that it was further agreed that beginning on January 1, 1965, Panhandle would have the option to purchase all gas produced from said leases at such price as Hugoton could then obtain from others; and that the parties contemplated that under expected rates of withdrawal of gas from the leases transferred to Hugoton during the period to 1965, Hugoton would produce and sell approximately 300 billion cubic feet of gas. Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph VIII of the complaint.

7. Answering the allegations of Paragraph IX of the complaint, interveners admit that on October 11, 1948, pursuant to the last-mentioned agreement, Hugoton issued the 810,000 shares of its stock to Panhandle; and that the sum of \$675,000 in cash was paid by Panhandle to Hugoton and that the aforementioned leases were transferred, assigned and conveyed by Panhandle to Hugoton. Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph IX of the complaint.

8. Answering the allegations of Paragraph X of the complaint, interveners admit that said 810,000 shares of stock comprise all of the outstanding stock of Hugoton; that all of the officers and directors of Hugoton are officers and directors of Panhandle; and that Hugoton has no executive officers or employees who are not also executive officers and employees of Panhandle. Except as herein expressly admitted, interveners deny each

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and every allegation contained in Paragraph X of the complaint.

9. Answering the allegations of Paragraph XI of the complaint, interveners admit that on October 11, 1948, the Board of Directors of Panhandle declared a dividend in kind at the rate of one-half share of the capital stock of Hugoton for each of the 1,620,000 outstanding shares of common stock of Panhandle. Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph XI of the complaint.

10. Answering the allegations of Paragraph XII of the complaint, interveners admit that on October 26, 1948, the Commission issued an order *In the Matter of Panhandle Eastern Pipe Line Company, Docket No. 6-1147*, a copy of which is attached to the complaint herein as Exhibit A, instituting an investigation of the facts and circumstances involved in the formation and proposed operation of Hugoton and the transfer to Hugoton by Panhandle of the Hugoton natural-gas reserves above-mentioned; that on November 10, 1948, the Commission issued another order in the same matter, a copy of which is attached to the complaint; that by said order, among other things, the Commission purported to require Panhandle and Hugoton to show cause at a public hearing scheduled for January 24, 1949, why the Commission should not by order find, determine and direct

143 (i) That Panhandle and Hugoton cancel the contract referred to in paragraph 4 hereof and that Panhandle return to Hugoton the aforesaid 810,000 shares of capital stock of Hugoton and cause Hugoton to return to Panhandle the leases of the 96,164.21 acres referred to in paragraph 4 hereof, together with the \$675,000.00 in cash received by Hugoton as aforesaid from Panhandle.

(ii) That Panhandle be prohibited from again transferring, assigning or conveying such leases without the consent of the Commission being first had and obtained.

(iii) That Panhandle refrain from paying to its stockholders, as a dividend or otherwise, such 810,000 shares of the capital stock of Hugoton and refrain from transferring the title to such shares of stock to such stockholders or to any person other than Hugoton.

Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph XII of the complaint.

11. Answering the allegations of Paragraph XIII of the complaint, interveners admit that in said order of November 10, 1948, the Commission purported to require that, pending final determination by the Commission of the questions to be presented at such January 24, 1949 hearing, Panhandle refrain from paying to its stockholders, as a dividend or otherwise, its ~~5~~10,000 shares of the capital stock of Hugoton; and that the Commission further purported to require in said order that Panhandle cause

144 Hugoton to refrain from transferring, assigning or conveying the above-mentioned leases, or any of them to any person, and from issuing or transferring any of its capital stock to any person and, pending final determination by the Commission of the questions presented at the hearing, that Hugoton refrain from transferring, assigning or conveying the above-mentioned leases, or any of them to any person and from issuing or transferring any of its capital stock to any person. Except as herein expressly admitted, interveners deny each and every allegation contained in Paragraph XIII of the complaint.

12. Intervenors deny that they have knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph XIV of the complaint.

13. Intervenors admit the allegations contained in Paragraph XV of the complaint.

14. Upon information and belief interveners deny each and every allegation contained in Paragraph XVI of the complaint.

15. Answering the allegations of Paragraph XVII of the complaint, interveners deny any knowledge or information sufficient to form a belief as to the truth of the allegations that the delay rentals, renewal bonus payments and other exploitation and development costs relating to the aforesaid natural-gas leases included by the Commission in Panhandle's operating revenue deductions in the rate proceedings referred to in Paragraph (c) of the Commission's order of November 10, 1948, amount to a sum in excess of \$665,000, and that the total estimated capital cost of the "Group A", "Group B" and "Group C" facilities authorized by the Commission for the purpose of enlarging Panhandle's system referred to in Paragraphs (d) to (k), inclusive, of said order of November 10, 1948, is \$56,998,550. Except as therein expressly stated interveners upon information and belief deny each and every allegation contained in Paragraph XVII of the complaint.

16. Upon information and belief interveners deny each and every allegation contained in Paragraph XVIII of the complaint.

FIRST DEFENSE

17. On or about October 29, 1948, Panhandle ceased to be the owner of any of the shares of the capital stock of Hugoton.

18. On October 29, 1948, the stockholders of Panhandle of record on that day became the owners of the 810,000 shares of the Capital stock of Hugoton and interveners thereupon became the owners of an aggregate of 65,314 shares of the capital stock of Hugoton and became entitled to certificates evidencing said ownership.

19. Since October 29, 1948, the Federal Power Commission and this court have been without jurisdiction over the transactions complained of in the complaint and neither the Federal Power Commission nor this court has any jurisdiction or right to cause to be withheld from the interveners the certificates evidencing their ownership of their shares of Hugoton stock.

146 20. The Commission's aforesaid order of November 10, 1948, and this court's original temporary restraining order of November 13, 1948, as continued by its order of November 22, 1948, unreasonably deprived interveners of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

21. If this court should grant the injunction as prayed for in the complaint, great and irreparable injury would be caused to interveners herein, and interveners would be unreasonably deprived of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and this court has no power under Article III, Section 2 of the Constitution of the United States to grant such relief.

WHEREFORE interveners, STEPHEN CARLTON CLARK, *et al.* pray:

- (1) That the complaint herein be dismissed;
- (2) That interveners have such other and further relief as to the court may seem just;

RICHARD, LAYTON & FINGER,
Attorneys for Petitioners.
4072 Du Pont Building,
Wilmington, Delaware.

WINTHROP, STIMSON, PUTNAM & ROBERTS, of Counsel,
32 Liberty Street,
New York, New York.
Dated: Nov. 29, 1948.

147 In United States District Court
Stipulation Amending Complaint

IT IS HEREBY STIPULATED AND AGREED by and between the Attorneys for the Plaintiff, the Defendant, and the Intervenor, that the Bill of Complaint filed herein be amended by deleting the period at the end of Paragraph (1) of the Complaint and placing a comma in its stead, and by adding the following: "and under the general equity powers of this Honorable Court."

WILLIAM MARVEL,
United States Attorney,
Attorney for Plaintiff.

E. ENNALLS BERL,
Attorney for Defendant.

ARTHUR G. CONNOLLY,
Attorney for Intervenor,
Gregory E. Smith.

CALEB S. LAYTON,
Attorney for Intervenor,
Stephen Carlton Clark,
et al.

SO ORDERED this 30th
day of November, 1948.
Paul Leahy.

148 In United States District Court
Findings of Fact and Conclusions of Law

This cause came on to be heard on the plaintiff's motion for a preliminary injunction and the defendant's motion to dissolve the temporary restraining order obtained by the plaintiff without notice, and the Court having considered the complaint, as amended, and the moving papers and the affidavits of the plaintiff and the moving papers, as amended, and the affidavits of the defendant, and having heard argument of the parties in open court and considered the points and authorities submitted by them, finds the facts and states the conclusions of law as follows:

Findings of Fact

1. Plaintiff, Federal Power Commission (hereinafter sometimes referred to as "the Commission"), is an agency of the United States charged with the duty of administering the Natural Gas Act, as amended.

2. Defendant, Panhandle Eastern Pipe Line Company (hereinafter sometimes referred to as "Panhandle"), is a Delaware corporation which owns or controls natural gas production properties in the states of Kansas, Oklahoma and Texas, and operates a pipe line system extending from Texas through Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio and into Michigan.

3. Hugoton Production Company (hereinafter sometimes referred to as "Hugoton") is a Delaware corporation which

Panhandle caused to be organized in September, 1948.

149 4. On October 11, 1948, pursuant to a written agreement of the same date, Panhandle purchased and acquired from Hugoton 810,000 shares of common stock of Hugoton in consideration of the sum of \$675,000 in cash and the conveyance by Panhandle to Hugoton of all of Panhandle's right, title and interest in and to gas leases (and some oil leases) on approximately 97,000 acres of undeveloped land located in Grant and Stevens Counties, Kansas, with Panhandle retaining the option to purchase on and after January 1, 1965 all or any specified portion of the gas produced from such acreage. Such acreage is wholly undeveloped and is not connected with any existing pipe line system.

5. The gas reserves under the leases transferred by Panhandle to Hugoton are estimated to be approximately 700 billion cubic feet. Under date of October 18, 1948, Hugoton entered into a contract with Kansas Power and Light Company providing for the sale by Hugoton to said Kansas Power and Light Company for the period of 15 years from November 1, 1949 to November 1, 1964 of gas to be produced by Hugoton from such leases. A copy of said contract was received by the Court as a part of the defendant's moving papers. Said contract provides, among other things, that all volumes of natural gas covered thereby are to be produced from wells located in the State of Kansas and Kansas Power and Light Company agrees that said gas is to be consumed by it or sold by it for consumption wholly within the State of Kansas. The total volume of gas to be sold by Hugoton to Kansas Power and Light

150. Company for the entire period of said contract is estimated to amount to 300 billion cubic feet. Panhandle asserts it still owns or controls, after the transfer of such leases to Hugoton, over 6,000 billion (6 trillion) cubic feet of gas, or more than enough gas reserves to serve its entire system, including facilities authorized but not yet constructed, for more than 25 years, but this is not conceded by plaintiff.

6. In 1946 and 1947, Panhandle applied to the Commission under Section 7 of the Natural Gas Act for certificates of convenience and necessity with respect to the proposed enlargement of its pipe line system by the construction of Group "A", Group "B" and Group "C" facilities. In presenting to the Commission, on those applications, evidence of its gas reserves, Panhandle included as a part of its total gas reserves acreage subsequently transferred on October 11, 1948 to Hugoton. The Certificates applied for were granted by the Commission on June 4, 1946, November 30, 1946 and June 10, 1948.

7. Panhandle asserts the gas reserves which it now owns or controls are greater than those which Panhandle owned or controlled when it applied for the Group "A" and Group "B" facilities; and the gas reserves which Panhandle now owns or controls are less than those which Panhandle owned or controlled when it applied for the Group "C" facilities, but the amount of the decrease is not material. But plaintiff does not concede these assertions. Construction of the Group "C" facilities has not yet commenced.

8. It has been the practice in the natural gas industry for companies to trade freely in gas leases, and the Commission has never heretofore asserted the right to regulate transfers of such leases.

9. Acreage transferred by Panhandle to Hugoton on October 11, 1948 was therefore included in Panhandle's rate base, and delay rentals, renewal bonus payments and other exploration and development costs relating to such acreage, were included in Panhandle's operating revenue deductions.

10. On October 11, 1948, the Board of Directors of Panhandle declared a dividend to the holders of the common stock of Panhandle, payable in common stock of Hugoton at the rate of one-half share for each share of common stock of Panhandle, said dividend comprising the entire 810,000 shares of common stock of Hugoton acquired by

Panhandle and all of the outstanding stock of Hugoton. Said dividend was declared to be payable November 17, 1948 to stockholders of record October 29, 1948.

11. On October 29, 1948, Panhandle delivered to United States Corporation Company, the transfer agent for Hugoton stock, a certificate representing 810,000 shares of common stock of Hugoton registered in the name of Panhandle and endorsed in blank and, pursuant to the directions of Panhandle, said United States Corporation Company caused said shares of stock to be transferred 152 to the names of the stockholders of record of Panhandle on October 29, 1948, caused Federal stock transfer stamps to be affixed and cancelled, and made out new certificates in the names of such persons and inserted the same in envelopes ready to mail, intending to mail said certificates on November 15 and November 16, 1948.

12. The common stock of Panhandle, which is listed on the New York Stock Exchange, became "ex-dividend" on October 29, 1948. The stock of Hugoton was widely traded in the "over the counter" market on a "when, as, and if" basis, starting on or about October 13, 1948.

13. On October 26, 1948, the Commission issued an order instituting an investigation of the facts and circumstances involved in the formation and proposed operation of Hugoton and the transfer to Hugoton by Panhandle of the gas leases above mentioned.

14. On November 10, 1948, the Commission entered a supplementary order joining Hugoton in the proceeding; setting the matter for hearing on January 24, 1949; directing the responding companies to show cause why the Commission should not direct Panhandle and Hugoton to cancel the transfer of said gas leases from Panhandle to Hugoton and the issuance of the capital stock of Hugoton to Panhandle, prohibit Panhandle from again transferring said leases without the prior consent of the Commission, and direct Panhandle to refrain from transferring said capital stock of Hugoton by way of dividend or otherwise; and directing maintenance of the *status quo* pending such determination.

153 15. On November 13, 1948, the Commission instituted this suit seeking to enforce its direction to maintain the *status quo* by injunctive relief, and applied for a preliminary injunction and for a temporary restraining order. To this end the Commission filed a verified complaint and a motion for a preliminary injunction, there be-

ing attached in support thereof, the affidavit sworn to November 12, 1948, of Edward L. Dunn, Examiner of Accounts for the Commission, and other exhibits.

16. On November 13, 1948, the Court, on the basis of the Commission's said verified complaint and moving papers issued a temporary restraining order enjoining Panhandle from (a) paying to its stockholders the dividend consisting of 810,000 shares of the capital stock of Hugoton, (b) delivering such shares of stock to such stockholders, (c) transferring the title to said shares of stock to said stockholders or others, and requiring Panhandle to cause Hugoton to refrain from transferring the gas leases and from issuing or transferring any capital stock.

17. On November 16, 1948, Panhandle filed with the Court its motion to dissolve the temporary restraining order together with the affidavit sworn to November 16, 1948, of Hy Byrd, Vice President and Treasurer of Panhandle and Treasurer of Hugoton, in support thereof.

18. On November 18, 1948, on the consent of the parties, the Court held a consolidated hearing on the Commission's motion for a preliminary injunction and Panhandle's motion to dissolve the temporary restraining order.

19. At said hearing on November 18, 1948, the Commission moved to amend its complaint "so as to invoke the jurisdiction of this Court on the additional ground of its equity powers," and on the consent of Panhandle, said motion was granted.

20. At said hearing on November 18, 1948 Panhandle moved to amend its motion to dissolve the temporary restraining order so as to include as a basis for requesting such relief the ground "that the complaint and moving papers show no ground for the issuance of the temporary restraining order," and on the consent of the Commission, said motion was granted.

21. At said hearing on November 18, 1948, the Court accepted the additional affidavit of Edward L. Dunn sworn to November 17, 1948 submitted by the Commission. On November 22, 1948 the Court accepted the affidavit of William G. Maguire, Chairman of the Board of Panhandle, sworn to November 21, 1948, submitted by Panhandle in reply to said affidavit of Edward L. Dunn.

22. On November 22, 1948 the Court ordered that said restraining order be extended to December 1, 1948.

23. On November 24, 1948, Gregory B. Smith, applied for leave to intervene as a defendant in this action, alleging

155 himself to be the holder of 1,000 shares of common stock of Panhandle and 500 shares of common stock of Hugoton. Said application has been granted.

24. On November 29, 1948, Stephen Carlton Clark, Frederick Ambrose Clark, Susan Vanderpoel Clark, Florence L. S. Clark, Stephen Carlton Clark, Jr., Alfred Corning Clark, Henry R. Labouisse, Jr., Paul S. Kerr, Martha H. Kerr, Watson Beach Day, Lillian W. Day, Mary Cobb Lowe, Eleanor S. Doolittle, Elinor D. Johnston, Elsie G. Pendleton, Charles E. Main, Laura S. Main, Kenneth A. Main, individually and Frederick Ambrose Clark and Watson Beach Day, as Trustees under Deed of Trust made by Frederick Ambrose Clark dated June 19, 1918, Walter C. Flanders and Watson Beach Day, as Trustees under Deed of Trust made by Stephen Carlton Clark dated June 26, 1917, Watson Beach Day and Stephen Carlton Clark, as Trustees under Deed of Trust made by Stephen Carlton Clark dated October 15, 1919, under Deed of Trust made by Stephen Carlton Clark dated April 26, 1932, under Deed of Trust made by Stephen Carlton Clark dated August 3, 1935, under Deed of Trust made by Alfred Corning Clark dated August 27, 1942, under Deed of Trust made by Frederick Ambrose Clark dated June 6, 1944, under Deed of Trust made by Frederick Ambrose Clark dated June 29, 1944, and as surviving Trustees under Deed of Trust made by Stephen Carlton Clark, Edward S. Clark, Robert S. Clark and Frederick Ambrose Clark dated May 18, 1917, Charles E. Main and Watson Beach Day, as Trustees under Deeds of Trust made by Stephen Carlton Clark for Stephen Carlton Clark, Jr. and Alfred Corning Clark dated June 5, 156 1940, Watson Beach Day and Paul S. Kerr, as Trustees under Deed of Trust made by Stephen Carlton Clark, Jr., dated July 13, 1943, Watson Beach Day, Charles E. Main and Paul S. Kerr, as Trustees under Deed of Trust made by Stephen Carlton Clark dated May 10, 1946, and The Clark Foundation, The Scriven Foundation, Inc., and The Mary Imogene Bassett Hospital, all being membership corporations organized and existing under the Membership Corporation Law of the State of New York, and Leatherstocking Corporation, a corporation organized and existing under the laws of the State of New York, applied for leave to intervene as defendants in this action, alleging themselves to be the holders of 130,628 shares of common stock of Panhandle and 65,314 shares of common stock of Hugoton. Said application has been granted.

Conclusions of Law

1. The complaint and the moving papers (considering also defendant's papers) as amended, do not show any basis for the relief sought by plaintiff.

2. An order denying plaintiff's motion for a preliminary injunction should be entered and the outstanding restraining order should expire by its own terms on December 1, 1948.

Wilmington, Delaware, November 30, 1948.

(s) PAUL LEAHY,
Ch. J.

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In United States District Court

Order Denying Motion for Preliminary Injunction—Nov. 30, 1948

Plaintiff having moved herein on November 13, 1948 for a preliminary injunction against the defendant Panhandle Eastern Pipe Line Company, enjoining said defendant, its officers, agents, representatives and employees, from paying to its stockholders as a dividend 810,000 shares of the capital stock of Hugoton Production Company, from delivering to such stockholders certificates for such 810,000 shares, and from transferring the title to such shares of stock to such stockholders, or to any other person, and requiring said defendant to cause Hugoton Production Company to refrain from transferring, assigning or conveying certain gas leases to any person and from issuing and transferring any of its capital stock to any person, and for a temporary restraining order, pending the determination of such motion, and the Court having on November 13, 1948 issued a temporary restraining order directing that until November 23, 1948, said defendant Panhandle Eastern Pipe Line Company, its officers, agents, representatives and employees be temporarily restrained and enjoined from doing such acts, and that said defendant be temporarily required to cause Hugoton Production Company to refrain from such acts, and said temporary restraining

158 ing order having subsequently, i. e., on November 22, 1948, been continued by the Court to December 1, 1948, and said defendant Panhandle Eastern Pipe Line Company having moved on November 16, 1948, that said temporary restraining order be dissolved, and said motions

having been consolidated for hearing on the consent of the parties and having duly come on to be heard on November 18, 1948, and the Court having read and filed and considered the verified complaint, as amended, and the moving papers and affidavits of the plaintiff, in support of the plaintiff's said motion and in opposition to the defendant's said motion, and the moving papers, as amended, and affidavits of the defendant, in support of the defendant's said motion and in opposition to the plaintiff's said motion, and William Marvel, Esq., having appeared for the plaintiff, in support of the plaintiff's said motion and in opposition to the defendant's said motion, with William S. Tarver, Esq., and Howell Purdue, Esq., of counsel, and E. Ennalls Berl, Esq., having appeared for the defendant Panhandle Eastern Pipe Line Company, in support of the defendant's said motion and in opposition to the plaintiff's said motion, with Robert P. Patterson, Esq., of counsel, and the Court having heard the arguments of said counsel and considered the points and authorities submitted by them, and having heard the arguments of Carl F. Farbach, Esq., Kevin McInerney, Esq., James A. Austin, Esq., George S.

159 Munson, Esq., and Gerard Smith, Esq., as *amici curiae* on behalf of stockholders of Hugoton Production Company, in support of the defendant's said motion and in opposition to the plaintiff's said motion, and Gregory B. Smith, Stephen Carlton Clark, Frederick Ambrose Clark, Susan Vanderpoel Clark, Florance L. S. Clark, Stephen Carlton Clark, Jr., Alfred Corning Clark, Henry P. Labouisse, Jr., Paul S. Kerr, Martha H. Kerr, Watson Beach Day, Lillian W. Day, Mary Cobb Lowe, Eleanor S. Doblittle, Elinor D. Johnston, Elsie G. Pendleton, Charles E. Main, Laura S. Main, Kenneth A. Main, individually and Frederick Ambrose Clark and Watson Beach Day, as Trustees under Deed of Trust made by Frederick Ambrose Clark dated June 19, 1918, Walter C. Flanders and Watson Beach Day, as Trustees under Deed of Trust made by Stephen Carlton Clark dated June 26, 1917, Watson Beach Day and Stephen Carlton Clark, as Trustees under Deed of Trust made by Stephen Carlton Clark dated October 15, 1919, under Deed of Trust made by Stephen Carlton Clark dated April 26, 1932, under Deed of Trust made by Stephen Carlton Clark dated August 5, 1935, under Deed of Trust made by Alfred Corning Clark dated August 27, 1942, under Deed of Trust made by Frederick Ambrose Clark dated June 6, 1944, under Deed of Trust made by Frederick

Ambrose Clark dated June 29, 1944, and as surviving Trustees under Deed of Trust made by Stephen Carlton Clark, Edward S. Clark, Robert S. Clark and Frederick

Ambrose Clark dated May 18, 1917, Charles E. Main and Watson Beach Day, as Trustees under Deeds of Trust made by Stephen Carlton Clark for Stephen Carlton Clark, Jr. and Alfred Corning Clark dated June 5, 1949, Watson Beach Day and Paul S. Kerr, as Trustees under Deed of Trust made by Stephen Carlton Clark, Jr., dated July 13, 1943, Watson Beach Day, Charles E. Main and Paul S. Kerr, as Trustees under Deed of Trust made by Stephen Carlton Clark dated May 10, 1946, and The Clark Foundation, The Scriven Foundation, Inc., and The Mary Imogene Bassett Hospital, all being membership corporations organized and existing under the Membership Corporation Law of the State of New York, and Leatherstocking Corporation, a corporation organized and existing under the laws of the State of New York, having made applications for leave to intervene as defendants and said applications having been granted, and the Court having made and filed its written opinion and findings of fact and conclusions of law, and due deliberation having been had; and as said temporary restraining order will expire on December 1, 1948, it is on motion of E. Ennalls Berl, Esq., attorney for defendant Panhandle Eastern Pipe Line Company,

ORDERED that the plaintiff's motion for a preliminary injunction be, and the same hereby is, in all respects denied, in accordance with the Memorandum filed by this Court in this cause on November 26, 1948.

(s) PAUL LEAHY
Ch. J.

198 In the United States Circuit Court of Appeals
For the Third Circuit

No. 9847

FEDERAL POWER COMMISSION,

Plaintiff and Appellant.

VS.

PANHANDLE EASTERN PIPE LINE COMPANY,
a Corporation,

Defendant and Respondent.

*Order Fixing Time for Hearing on Appeal and Granting
Stay Pending Appeal—Filed Nov. 30, 1948*

Present: Maris, Goodrich & Kalodner, JJ.

Upon reading and filing the verified petition of appellant, Federal Power Commission, for stay pending appeal, and good and sufficient reason appearing to me, therefore

IT IS HEREBY ORDERED that this cause shall be heard on appeal by this Court at 10:30 o'clock in the forenoon on December 21, 1948, or as soon thereafter as counsel can be heard, at the United States Court House, Philadelphia, Pennsylvania.

IT IS FURTHER ORDERED that pending the hearing of this appeal and the further order of this Court, respondent, Panhandle Eastern Pipe Line Company, its officers, agents, representatives and employees, be and they hereby are (i) enjoined and restrained from paying to its common stockholders as a dividend the 810,000 shares of the capital stock of Hugoton Production Company referred to in said petition for stay, from delivering to such stockholders certificates for such 810,000 shares, and from transferring the title to such shares of stock to such stockholders or to any other person; and (ii) required to cause Hugoton Production Company, its officers, representatives, employees and agents, including its transfer agents, to refrain from transferring, assigning, or conveying the certain oil and gas leases and gas leases on 96,164.21 acres of land in Grant and Stevens Counties, Kansas, referred to in said petition, or any such leases, to any person, and from issuing or transferring any of its capital stock to any person, until the further order of this Court; and

199 IT IS FURTHER ORDERED that service of a copy of this order and of the petition for stay pending ap-

peal upon Messrs. Southerland, Berl & Potter, attorneys for respondent, by leaving a copy thereof at their office at Delaware Trust Building, Wilmington, Delaware, on November 30, 1948, shall be good and sufficient service hereof.

Dated at Philadelphia, Pennsylvania, November 30, 1948.

BY THE COURT,

MARIS,

United States Circuit Judge.

(File endorsement omitted)

201 In the United States Court of Appeals
For the Third Circuit
(Title omitted)

*Petition of the State Corporation Commission of the State
of Kansas for Permission to Intervene—Filed
Dec. 20, 1948*

(File endorsement omitted)

202 The State Corporation Commission of the State
of Kansas respectfully moves this Honorable Court
for permission to intervene in and be made a party to this
appeal. It advances the following reasons in support of
its motion.

I

The State Corporation Commission of the State of Kansas (hereinafter, for convenience, referred to as the Corporation Commission) is by Chapter 55, Article 7 of the 1947 Supplement to the General Statutes of Kansas empowered to and under the provisions thereof does exercise jurisdiction over the production and marketing of natural gas within the State of Kansas.

II

It is the duty of the Corporation Commission, under the statutes cited, to regulate the taking of natural gas to accomplish

- (a) The prevention of waste,
- (b) The protection of correlative rights, and
- (c) The orderly development in and of any common source of supply.

203

III

Under the authority conferred by the cited statutes, the Corporation Commission has issued a Basic Pro-

ration Order for the Kansas Hugoton Field, and it issues each month a monthly proration order regulating the production of natural gas from the Kansas Hugoton Field to accomplish the objective recited in Paragraph II. A copy of the Basic Proration Order and a sample monthly proration order will be furnished the Court for its convenience. It is thought unnecessary to make these orders a part of the record in this appeal.

IV

The Corporation Commission, by Chapter 66 of the General Statutes of Kansas, is charged with the regulation of public utilities within the State of Kansas to the end that sufficient and efficient public utility service will be rendered the people of the State of Kansas and that fair and reasonable rates will be charged for such service. The Kansas Power and Light Company, operating as a gas and electric public utility company within the State of Kansas, is subject to the utility regulatory jurisdiction of the Corporation Commission. The transaction sought here to be enjoined would, if the injunction is refused, result in a supply of natural gas being made available to the Kansas
204 Power and Light Company enabling the company to continue sufficient and efficient gas service to its 52,500 gas customers in Kansas. The company's presently available supply is sufficient to serve these customers only for four to five years in the future.

V

In addition to making available to the Kansas customers of the Kansas Power and Light Company a supply of gas for at least fifteen years in the future, the contract between the Kansas Power and Light Company and the Hugoton Production Company provided for a price of twelve cents per M. c. f. to be paid for the gas sold. This price is more nearly commensurate with the value of the gas than the price paid under most of the existing gas sale contracts applicable in the Kansas Hugoton Field and promotes the welfare of the natural gas industry in Kansas and the welfare of the people of Kansas.

VI

In the performance of its statutory duties with respect to natural gas and regulation of public utilities, the Corporation Commission has intervened in and been a party to numerous hearings before the Federal Power Commis-

sion. The Corporation Commission has consistently adhered to a policy of resisting all measures that conflict or tend to conflict with the efficient discharge of its statutory duties. It presently has on file a petition to intervene in Federal Power Commission Docket Number G-1147, entitled *In the Matter of Panhandle Eastern Pipe Line Company*. An order issued by the Federal Power Commission in Docket G-1147 on November 10, 1947, is the ground on which that commission based the instant proceeding.

VII

The Corporation Commission has faced many difficult problems in its efforts to promote orderly development of the Kansas Hugoton Field. Several large purchasers of natural gas have sought to obtain large gas reserves within the Hugoton Field by securing gas leases from individual landowners or assignments of leases from individual lessees. Often the reserves secured by a particular purchaser are not advantageously located with respect to the transportation facilities available to it but are near the transportation facilities of another purchaser. Free trading of leases and production rights among the various purchasers to enable them economically to connect producing wells to pipeline facilities has resulted in the prompt production and utilization of gas as the wells are completed. This tends to eliminate unproduced prorated allowable production, facilitates regulation of gas taking to meet the market demands and helps to protect the owner of newly developed acreage against drainage by other outlets in the vicinity of his well. Above all, it has enabled purchasers to "block," or consolidate, their respective production acreage to or around their pipeline transportation. This latter practice has been encouraged by the Corporation Commission because it helps to prevent undeveloped islands of productive acreage and is an important factor in securing orderly development of the Kansas Hugoton Field.

VIII

The constant, continuing supervision over production and marketing practices in the Kansas Hugoton Field by the Corporation Commission has as its goal the complete fulfillment of the purpose and intent of the laws enacted with respect thereto by the legislature of the State of Kansas. The Corporation Commission takes the position

that the free interchange of leases and production rights among the purchasers in the Hugoton Field is essential to the discharge of the statutory duty imposed upon it to secure the orderly development of the natural gas resources within the State of Kansas.

IX

It is further the position of the Corporation Commission that the practice of exchanging leases among purchasers within the State of Kansas is an activity related to
207 production and gathering of natural gas over which the Corporation Commission has and exercises jurisdiction, and which is specifically excluded from the jurisdiction of the Federal Power Commission by 52 Stat. 821, 15 U. S. C. A. 517(b).

X

Also it is the position of the Corporation Commission that the transactions involved in this proceeding are designed to make gas produced in Kansas available to Kansas consumers now being served but whose future supply will be seriously threatened if the transactions are enjoined. The regulation and supervision of gas public utilities are designed to secure efficient and sufficient gas service at fair and reasonable rates. If the supply available to users connected to the Kansas Power and Light Company is threatened, it is the duty of the Corporation Commission to lend its efforts in support of a good faith attempt on the part of the Kansas Power and Light Company to secure the gas necessary to enable it to continue the service it is required by statute to render.

XI

The Corporation Commission was given no notice of the proceedings entitled *Federal Power Commission vs. Panhandle Eastern Pipe Line Company*, No. 1172. Civil, wherein it is sought to enjoin Panhandle Eastern from
208 culminating a series of transactions arising out of the formation of the Hugoton Production Company, was not represented in that proceeding, and has not otherwise had an opportunity to make its position on and interest in the matter pending known to the Court.

WHEREFORE, the State Corporation Commission of the State of Kansas respectfully prays that this Honorable Court grant it leave to intervene in and be made a party to this appeal, to be heard on the matters herein involved

and to make known and protect its interests as they may appear herein.

JEFF A. ROBERTSON,
JAY KYLE,
DOUGLAS GLEASON,

*Attorneys for the State Corporation
Commission of the State of Kansas.*

209. In United States Court of Appeals
For the Third Circuit
(Title Omitted)

*Order Granting the State Corporation Commission of the
State of Kansas Leave to Intervene—
Filed Dec. 21, 1948.*

Present: MARIS, GOODRICH and KALODNER, *Circuit Judges.*
Upon consideration of the petition of The State Corpora-
tion Commission of the State of Kansas for permission to
intervene in the above entitled cause,

It is ORDERED that The State Corporation Commission of
the State of Kansas be, and it is hereby granted leave to
intervene.

By the Court,
MARIS,
Circuit Judge.

December 21, 1948.
IDA O. CRESKOFF, *Clerk.*

(File Endorsement Omitted)

210. In United States Court of Appeals
For the Third Circuit
No. 9847

FEDERAL POWER COMMISSION, APPELLANT

v.

PANHANDLE EASTERN PIPE LINE COMPANY.

Appeal from Order of the United States District Court
for the District of Delaware

Argued December 21, 1948

Before MARIS, GOODRICH and KALODNER, *Circuit Judges.*

Opinion of the Court—Filed January 6, 1949

By GOODRICH, *Circuit Judge.*

Dramatis Personae

1. Federal Power Commission, called "Commission,"
plaintiff in the court below and appellant here.

2. Panhandle Eastern Pipe Line Company, called "Panhandle," defendant below and appellee here.

3. State Corporation Commission of the State of Kansas.

4. Various Interveners, shareholders of Panhandle.

5. A part with no speaking lines but referred to by all the parties: Hugoton Production Company, called
211 "Hugoton." It is a child of Panhandle, incorporated under the laws of the State of Delaware. Whether the child is legitimate or not is one of the points in this litigation.

Argument

Panhandle is an interstate pipe line company which transports and sells gas to local distributors from Texas to Michigan. This gas it gets from wells in Texas, Kansas and Oklahoma. It says it has gas properties under lease which will yield some six trillion cubic feet of natural gas. In September, 1948, Panhandle organized Hugoton, transferred to it gas leases on 97,000 acres of land in Kansas, and retained an option to purchase all or part of the gas produced from that land after January 1, 1963. Hugoton, in turn, has made a contract to sell the gas produced to a distributing company in Kansas which in turn has contracted to sell it for consumption wholly within the state of Kansas. Panhandle also paid Hugoton \$675,000 in cash and took back from this company all of its outstanding capital stock. Then it declared a dividend to its own shareholders, one share of Hugoton to every two-share ownership of Panhandle. Share certificates were made out, put in envelopes and made ready to mail from the office of the United States Corporation Company in New Jersey. Mailing was held up by a temporary restraining order by the District Court. That court, after hearing, refused a preliminary injunction. Plaintiff appealed. We continued the stay until the case could be heard and decided in this Court.

The Commission took its first action on October 26, 1948, when it issued an order instituting an investigation of the formation and proposed operation of Hugoton, and the transfer to it of the gas leases mentioned above. On November 16, 1948, the Commission issued a supplementary order to Panhandle and Hugoton, setting the matter down for hearing on January 24, 1949, directing the com-
212 panies to show cause why the transfers of leases and stock should not be set aside; and directing maintenance of the status quo pending such determination.

Legal Points

The controversy here arises out of the statute known as the Natural Gas Act passed in 1938.¹ That statute by its first section declares that federal regulation in the matters of transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest. There is no doubt that Panhandle is transporting and selling natural gas in interstate commerce and that under section 1 of the Act such transportation and sale by the company are subject to its provisions. The last sentence of the first section of the statute, however, carves out from the subject-matter to be regulated a very important exception. The words are: " * * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." 15 U. S. C. A. § 717(b).

It would certainly seem from the first half dozen readings of these exclusionary words in the statute that Congress has pretty clearly taken out from its operation and left to state regulation² the subject-matter of the Panhandle-Hugoton transaction. That subject-matter was a parcel of gas leases on land in Kansas. It is pretty hard to see why such leases are not facilities used in the production of natural gas. The word "facilities" has a pretty wide meaning as one looks it up in the

¹ 15 U. S. C. A. § 717.

² "In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which States are constitutionally competent to act. Thus the House Committee Report states: 'The bill takes no authority from State commissions, and is so drawn as to complement and in no manner usurp State regulatory authority.' [H. R. Rep. No. 709, 75th Cong., 1st Sess., 2.] Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. * * * Interstate Natural Gas Co., Inc. v. Federal Power Commission, 331 U. S. 682, 690 (1946). Cf. Colorado Interstate Gas Co. v. Federal Power Commission, 324 U. S. 581, 602 (1945) as to the inclusion of production facilities in the rate base.

The states are exercising their regulatory powers in this field. See, e.g., Kansas Gen. Stat., c. 55, §§ 701-713 (Supp. 1947); Mich. Stat. Ann., c. 97 (Supp. 1947); Okla. Stat. Ann., Tit. 52, c. 3, §§ 81-247; Texas Rev. Civ. Stat. Title 102, § 6008 et seq. (Vernon, 1925, with Supp. 1948).

dictionary and a glance at the use of the term in court decisions indicates no narrowing of the breadth of the term.³ We have no reason to think that Congress meant it to be narrowly applied here.

One is, therefore immediately confronted with the question: Why, if matters concerning local gas leases are excluded from the scope of the statute, does the Commission charged with its administration having anything to do with the transaction between Panhandle and Hugoton? It is true that under section 14 of the Act the Commission has wide investigatory powers, much wider than any subject-matter regulated by the statute. It is, for instance, authorized to conduct investigations to obtain information to serve as a basis for recommendation for further legislation to Congress. It was as a matter of investigation that the Commission first started to work upon this Panhandle transfer. But no one in the argument before this Court challenges the scope of the Commission's investigatory power. And such power does not, as to this litigation, require any action from a court of equity.

The first answer the Commission makes to the contention that regulation of this transaction is beyond the authority which the Congress granted it, is to say that it is now an established principle of administrative law that the administrative body or agency is, in the first instance, its own judge of the scope of its jurisdiction. Several Supreme Court decisions are cited to us in support of this suggested principle.⁴ This Court is not unfamiliar with the decisions cited nor the problems they present, and it quite realizes the risks of making sweeping generalizations in a developing field of the law. We think the one suggested to us is too sweeping. The instances cited were cases where courts came in between the litigant and the agency and blocked, or refused to assist, the carrying out of duties imposed by the lawmaking body upon the agency. The Wages and Hours Administration cannot,

³ See especially *Hartford Electric Light Co. v. Federal Power Commission*, 131 F. 2d 953 (C. C. A. 2, 1942); *Jersey Central Power & Light Co. v. Federal Power Commission*, 129 F. 2d 183 (C. C. A. 3, 1942); *People's Natural Gas Co. v. Federal Power Commission*, 127 F. 2d 155 (App. D. C., 1942).

⁴ *Macanley v. Waterman Steamship Corp.*, 327 U. S. 540 (1946); *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186 (1946); *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501 (1943); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41 (1938). See Nathanson, *Some Comments on the Administrative Procedure Act*, 41 Ill. L. Rev. 368, 409 (1947); cf. *Berger, Exhaustion of Administrative Remedies*, 48 Yale L. J. 981, 992 (1939).

of course, determine whether a given operation in a particular factory is subject to the statute until he finds out what the operation is and then find out if the provisions of the law are being obeyed by the factory owner.⁵ But in this case no court is stopping between the Commission and the performance of its job. The Commission is, on the other hand, seeking court help, which it admits is discretionary, in a situation where its investigatory powers have been unopposed.⁶ When a party plaintiff seeks court help, it must show that it is entitled to such help. In determining whether a plaintiff is entitled to the relief asked, the court cannot escape the responsibility of deciding whether plaintiff has been given rights or powers for which court sanction is now sought.

On the question of an administrative agency's determination of its own jurisdiction, moreover, we find that with regard to this Commission and this subject-matter, the agency has pretty well defined its own position. It has been found as a fact that "It has been the practice in the natural gas industry for companies to trade freely in gas leases, and the Commission has never heretofore asserted the right to regulate transfers of such leases." Furthermore, the Commission itself has stated officially: "The Federal Power Commission is of the opinion that it was the intent of Congress that the control of production or gathering of natural gas should remain a function of the States and that the Natural Gas Act should not provide for regulation of those subjects." 18 Code Fed. Regs. § 03.79, p. 2903 (Supp. 1947). And the same point has been stated in Supreme Court opinions, although the statements are doubtless *obiter* and the court's attention was directed to some other point.⁷

Our conclusion as to the argument on this part of the case is that it is our obligation to go ahead and decide the instant appeal on what we believe to be its merits without waiting for further action by the Commission.

⁵ Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186 (1946).

⁶ See 2 Vom Baur, Federal Administrative Law § 825 (1942).

⁷ "We do not mean to suggest that Congress was unmindful of the interests of the producing states in their natural gas supplies when it drafted the Natural Gas Act. As we have said, the Act does not intrude on the domain traditionally reserved for control by state commissions; and the Federal Power Commission was given no authority over the production or gathering of natural gas." Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 594, 612-613 (1944). See also Interstate Natural Gas Co., 331 U. S. 682, 690 (1946); Colorado Interstate Gas Co. v. Federal Power Commission, 324 U. S. 581, 602 (1945).

The Commission's argument for foundation of jurisdiction makes three points. In the first place it says that Panhandle in a previous matter in which the Commission undoubtedly had jurisdiction, represented most of the leases included in the Panhandle-Hugoton transaction to be used and useful in the operation of its then existing pipe line facilities. (2) On the basis of this and, of course, other representations and facts, the Commission permitted such leases to be included in Panhandle's rate base. (3) Panhandle in an application for certificates of public convenience and necessity under section 7 of the Act made representations to the Commission on the basis of acreage of gas leases it held, some of which are being disposed of in this transaction with Hugoton. These three points, it is said, bring the alienation of gas leases within the scope of Commission activity and form the basis for asking that the Hugoton transaction be held up until the Commission makes its decision. The Commission has been very competently

216 represented and the argument made on its behalf is ingenious and plausible. That there is a connection between the handling of matters in a local gas field and interstate transportation and sale of gas cannot be denied. No doubt Congress could have gone much further than it did in fixing the scope of federal regulation. But it clearly and intentionally drew a line short of where it could have gone.

So, it seems to us that the Commission's argument proves too much. If it prevails, a gas company which had had Commission action on its rate base could never sell an outworn truck, nor an obsolete drilling machine without getting Commission approval. It would, likewise, be compelled to take to the Commission every proposed transfer of a ten acre gas lease in exchange for another, no matter how obviously desirable the transfer might be in collecting its holdings in a contiguous area instead of having them scattered. In other words, by this process, it seems to us, the Commission will have taken over the area of regulation of facilities for gas production which by express terms of section 1 of the statute were to be excluded from Commission regulation. The words of the Court of Appeals for the District of Columbia seem applicable, although they were said in connection with a different kind of claim by the Commission: "But the administrative body finds a sufficient penumbra of meaning to justify a claim to more authority than appears upon the face of its grant. It asserts the extended authority and thus forces the issue upon the

courts." The court went on to point out that if it is desirable to extend Commission power, Congress should be asked to do it. The same advice applies here *mutatis mutandis*.

Section 20 of the statute provides for action being brought in federal courts "whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute violation of the provisions of this Act or any rule or regulation thereunder." 15 U. S. C. A. § 717. Now

the Commission has not alleged that Panhandle or Hugoton has violated the statute. The most it says is that the Commission might, on investigation, find that what had been done was in violation of the law. So the first part of the language quoted is not applicable to give it a standing to ask for court help at this point.

The appellant's argument points further to the Commission's order of November 10, in which it directed the company to show cause why the transfer of leases should not be set aside and directed maintenance of the status quo pending determination. This is an order no doubt. But if it is not a valid order because beyond Commission jurisdiction, the Commission cannot have court help to enforce it. We have endeavored to set out above why we think an order interfering with the transfer of these leases would go beyond Commission authority.

Argument for some of the interveners tells the Court that the Panhandle-Hugoton transaction is a thing done and there is nothing a court can do to stop it. This argument makes no appeal to us. We do not think that the shareholders of Panhandle have fully completed rights to their stock dividends of Hugoton until they get the certificates. Those certificates are now in the hands of the custodian and are held there by the action of this Court. If we were convinced that the Commission had the proper grounds for asking for relief, we think an injunction would accomplish everything necessary to prevent consummation of the transaction. It is not because we think the equitable powers of the District Court are insufficient, but because we do not think the facts call for their exercise, that we are approving that court's refusal of relief in this case.

The judgment of the District Court will be affirmed. Because of the nature of the situation, however, we shall continue the stay order for ten days from the date of the

* Border Pipe Line Company v. Federal Power Commission, 360 U. S. 149, 80 F. 2d 1000 (App. D. C. Nov. 22, 1948).

entry of our judgment. That will give the plaintiff
 218 opportunity to seek certiorari if it is so advised.
 Unless we do take this action it is quite obvious that
 since our stay order disappears when the judgment is
 entered the case will become moot.

219 In United States Court of Appeals
 For the Third Circuit
 No. 9847

FEDERAL POWER COMMISSION, APPELLANT

v.

PANHANDLE EASTERN PIPE LINE COMPANY

On Appeal from the United States District Court
 for the District of Delaware

Present: Maris, Goodrich and Kalodner, Circuit Judges.
Judgment--Filed Jan. 6, 1949.

This cause came on to be heard on the record from the
 United States District Court for the District of Delaware
 and was argued by counsel.

On consideration whereof, it is now here ordered and
 adjudged by this Court that the judgment of the said Dis-
 trict Court in this case be, and the same is hereby affirmed.
 January 6, 1949.

BY THE COURT,
 HERBERT F. GOODRICH,
 Circuit Judge.

(File endorsement omitted.)

223 In United States Court of Appeals
 For the Third Circuit
 (Title Omitted)

Present: Maris, Goodrich and Kalodner, Circuit Judges.
*Order Granting Further Interlocutory Stay Until
 January 16, 1949--Filed Jan. 6, 1949*

It Is ORDERED that Panhandle Eastern Pipe Line Com-
 pany, its officers, agents, representatives and employees,
 be and they hereby are (1) enjoined and restrained from
 paying to its common stockholders as a dividend the
 810,000 shares of the capital stock of Hugoton Production
 Company referred to in said petition for stay, from deliver-
 ing to such stockholders certificates for such 810,000 shares,

and from transferring the title to such shares of stock to such stockholders or to any other person; and (2) required to cause Hugoton Production Company, its officers, representatives, employees and agents, including its transfer agents, to refrain from transferring, assigning, or conveying the certain oil and gas leases and gas leases on 96,164.21 acres of land in Grant and Stevens Counties, Kansas, referred to in said petition, or any of such leases, to any person, and from issuing or transferring any of its capital stock to any person, until ten days from the date of this order.

January 6, 1949.

BY THE COURT,
HERBERT F. GOODRICH,
Circuit Judge.

(File endorsement omitted.)

228

In United States Court of Appeals
For the Third Circuit

(Title Omitted)

*Stipulation Continuing Restraining Order of Jan. 6, 1949,
and Staying Mandate to Jan. 23, 1949—
Filed Jan. 14, 1949*

It is hereby stipulated and agreed by and between counsel for the Federal Power Commission and Panhandle Eastern Pipe Line Company, appellant and appellee, respectively, in the above-entitled case, that the restraints and requirements imposed upon appellee by this Court's restraining order entered on January 6, 1949, shall continue in full force and effect to and including January 23, 1949; and,

It is further stipulated and agreed that the mandate of the Court upon its judgment entered herein on January 6, 1949, shall be stayed to and including January 23, 1949.

January 14, 1949.

/s/ WILLIAM S. TARVER,
William S. Tarver,
Counsel for Federal Power
Commission, Appellant.

/s/ E. ENNALLS BARL,
E. Ennalls Barl,
Counsel for Panhandle
Eastern Pipe Line Company,
Appellee.

It is so ordered.

BY THE COURT,

HERBERT F. GOODRICH,
Circuit Judge.

(File endorsement omitted.)

229

In United States Court of Appeals
For the Third Circuit
(Title Omitted)

*Order Staying Mandate and Continuing Interlocutory
Restraint to Feb. 12, 1949, etc.*

Upon consideration of plaintiff-appellant's motion to stay the mandate and to continue in effect the interlocutory restraint imposed upon defendant-appellee by our order of January 6, 1949, as further extended to January 23, 1949, by a stipulation between counsel for the parties signed January 14, 1949, and

The Court having been advised by plaintiff-appellant that the Solicitor-General has authorized the filing of a petition for a writ of certiorari with the Supreme Court of the United States, and such petition will be filed, it is this 21st day of January, 1949,

ORDERED that our mandate be and hereby is stayed and the interlocutory restraint imposed by our order of January 6, 1949, as further extended by a stipulation between counsel for the parties, be continued in force and effect until February 12, 1949, and, upon notification to the clerk of this Court on or before said date that plaintiff-appellant has filed in the Supreme Court its petition for a writ of certiorari, until final disposition of the cause by the Supreme Court.

Upon stipulation by consent for plaintiff-appellant and defendant-appellee, Panhandle Eastern Pipe Company, the restraints and requirements herein imposed are conditioned upon the entry on or before January 28, 1949, of an order by the Federal Power Commission postponing its hearing now set for February 7, 1949, in its Docket No. G-1147 until some date to be hereafter fixed by the Commission which will be subsequent to final disposition of this case by the Supreme Court.

January 21, 1949.

BY THE COURT,

GOODRICH,
Circuit Judge.

230 In the Supreme Court of the United States

*Stipulation as to Printing Record—Filed February
11, 1949*

SUBJECT TO THIS COURT'S APPROVAL, IT IS HEREBY STIPULATED AND AGREED by and between the parties to this cause, through their respective attorneys, that for the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case, the printed record may consist of the following:

1. The following portions of the typewritten appendix to the brief for appellant, Federal Power Commission, as filed with the United States Court of Appeals for the Third Circuit: page 1a, about the middle of the page, commencing with the words, "In the District Court of the United States," to and including page 52a, about the middle of the page, concluding with the words, "Bernice P. Stone, Notary Public in and for the District of Columbia."

2. The following excerpts from the transcript of hearing in the District Court of the United States for the District of Delaware, on motion to dissolve restraining order and motion for preliminary injunction:

231 (a) Page 1, about the middle of the page, commencing with the words, "Superior Courtroom No. 1," to and including page 2, line 5, concluding with the words, "Girard Smith, a Hugoton stockholder."

(b) Page 3, line 13, the words and punctuation, "Mr. Patterson:"

(c) Page 5, line 2, commencing with the words, "Now, those transactions," to and including page 7, line 9, concluding with the words, "the stockholders."

(d) Page 7, line 15, commencing with the words, "The Court," to and including page 8, line 13, concluding with the words, "they wanted."

(e) Page 20, line 33, commencing with the words, "Mr. Patterson," to and including page 21, line 9, concluding with the words, "All right."

(f) Page 21, line 11, commencing with the words and punctuation "Mr. Farbach:" to page 22, line 14, concluding with the word "lifted".

(g) Page 22, line 15, commencing with the words, "The Court," to page 24, line 21, concluding with the word, "stock."

(h) Page 25, line 6, commencing with the words and punctuation "Mr. McInerney:" to and including page 26, line 15, concluding with the word "picture".

(i) Page 29, line 7, commencing with the words and punctuation "Mr. Munson:" to line 18, concluding with the word "name".

(j) Page 29, line 20, commencing with the words, "Mr. Tarver," to page 30, line 2, concluding with the words and punctuation, "Mr. Tarver:".

(k) Page 30, line 6, commencing with the words, "we now ask leave," to line 8, concluding with the words "equity powers."

(l) Page 39, line 5, commencing with the words and punctuation "The Court:", to and including page 41, line 6, concluding with the words "public convenience and necessity".

(m) Page 45, line 1, commencing with the words, "The Court," to line 7, concluding with the words and punctuation, "of the act,".

(n) Page 46, line 22, the words and punctuation, "Mr. Tarver:".

(o) Page 48, line 15, commencing with the words, "May it please," to line 16, concluding with the word, "Commission."

(p) Page 51, line 6, commencing with the word "If" to page 52, line 2, concluding with the word and punctuation "please—".

(q) Page 52, line 3, commencing with the words, "The Court," to line 7, concluding with the words, "the court, yes."

(r) Page 56, line 15, commencing with the words, "Mr. Tarver," to and including page 57, line 11, concluding with the words, "ultimate decision."

(s) Page 66, line 7, the words and punctuation, "Mr. Tarver:".

(t) Page 68, line 2, commencing with the words, "Judge Patterson," to and including line 13, concluding with the words, "this way."

3. The following portions of the typewritten appendix to the brief for appellant, Federal Power Commission, as filed with the United States Court of Appeals for the Third Circuit: pages 57a to 88a, inclusive.

4. The following portions of the proceedings in the United States Court of Appeals for the Third Circuit:

(a) Order dated November 30, 1948, fixing time for hearing of cause on appeal and granting stay pending appeal.

(b) Petition of The State Corporation Commission of the State of Kansas for permission to intervene; filed on December 20, 1948.

(c) Order dated December 21, 1948, granting leave to said Commission to intervene.

(d) Opinion of the Court, filed January 6, 1949.

(e) Judgment, filed on January 6, 1949.

(f) Order filed on January 6, 1949, continuing stay order in effect for a period of 10 days.

(g) Stipulation and order dated and filed on January 14, 1949, continuing restraining order and staying mandate to January 23, 1949.

(h) Order dated January 21, 1949, staying mandate and continuing interlocutory restraint in force and effect.

IT IS FURTHER STIPULATED AND AGREED THAT the printing of the foregoing material is without prejudice to the right of the parties to refer to and rely upon any portion of the transcript of record which is not included in the portions of the record to be printed as above described.

Dated: this 10th day of February, 1949.

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Supreme Court of the United States

No. 558—October Term, 1948

Order allowing certiorari

Filed March 28, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.